

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PARALLEL NETWORKS LICENSING, LLC,))
) VOLUME 1
Plaintiff,))
) Civil Action
v.) 13-2073-KAJ
))
MICROSOFT CORPORATION,))
))
Defendant.))

Monday, May 8, 2017
9:00 a.m.
Courtroom 4A

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE KENT A. JORDAN, U.S.C.C.J.

APPEARANCES:

YOUNG CONAWAY STARGATT & TAYLOR

BY: ADAM POFF, ESQ.

-and-

McKOOL SMITH, P.C.
BY: DOUGLAS A. CAWLEY, ESQ.
BY: CHRISTOPHER BOVENKAMP, ESQ.
BY: JUSTIN ALLEN, ESQ.
BY: ANGELA VORPAHL, ESQ.
BY: JOHN CAMPBELL, ESQ.
BY: KEVIN HESS, ESQ.
BY: LEAH BURATTI, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2
3 FISH & RICHARDSON
4 BY: JUANITA BROOKS, ESQ.
5 BY: MARTINA TYREUS HUFNAL, ESQ.

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7 Counsel for the Defendants
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1 THE COURT: Good morning. Please
2 be seated. We're scheduled to begin jury
3 selection at 9:30 and I got the word that you
4 folks have some issues you'd like to address
5 first. So what brings us in this early?

6 MR. BOVENKAMP: Your Honor, may I
7 approach?

8 THE COURT: Yes.

9 MR. BOVENKAMP: Your Honor, there
10 are three additional housekeeping matters that
11 are agreed between the parties but we just want
12 to get on the same page with Your Honor to
13 streamline the way the case proceeds so we can
14 go through those really quickly.

15 The first is regarding exhibits
16 that are going to be used today with the
17 witnesses today. There's been an agreement by
18 the parties that there's a set of exhibits that
19 there's no objections to with respect to the
20 witnesses testifying today using them.

21 We propose that we pre admit those
22 exhibits so we don't have to go through the
23 process for the witnesses to identify themselves
24 before putting them up on the screen, et cetera,

1 so we can streamline the presentation.

2 I know Your Honor has said he
3 hasn't done that before, but we think basically
4 with the parties today going forward that will
5 allow things to go more smoothly and we will
6 submit a list of those particular exhibits that
7 are agreed between the parties.

8 THE COURT: All right.
9 Ms. Brooks?

10 MS. BROOKS: Your Honor, we defer
11 entirely to the Court and what the Court thinks
12 is the most appropriate. I know there's concern
13 for the record that we haven't formally admitted
14 them in front of the jury so we defer to the
15 Court on that.

16 THE COURT: Well, that isn't the
17 way I'm accustomed to doing this for a reason
18 I've got an eye on it for the Appellate Court.
19 But how many exhibits are we talking about?

20 MR. BOVENKAMP: Well, I have the
21 list here, Your Honor. With one witness
22 approximately six and with the other, there's
23 approximately 10 to 15.

24 THE COURT: All right. Here's

1 what I'll ask you to do: I suspect that part of
2 this is time saving to keep you from having to
3 burn part of your clock time, and that's okay if
4 you guys have worked that out. But I do want
5 the jury to hear the exhibits that are coming
6 in. So when the jury is in the box, the witness
7 takes the stand, you can simply say to me on the
8 record in front of the juror, Your Honor, we've
9 got agreement on the following exhibits being
10 admitted. With the witness sworn in on the
11 stand, it will only take you a moment and that
12 way that witness is in the transcript and it
13 will have the record and the jury will hear it.
14 All right?

15 MR. BOVENKAMP: Yes, Your Honor,
16 that's absolutely fine.

17 THE COURT: All right.

18 MR. BOVENKAMP: Two other
19 housekeeping matters for Parallel Networks. One
20 is with regards to offer of proof. There are
21 some summary judgment motions rulings and
22 Daubert motions and something earlier in the
23 case that occurred regarding certificate of
24 correction that we would like to make an offer

1 of proof for, but we would propose submitting
2 that in paper and identifying the evidence in
3 the proof, et cetera, that goes along with that.
4 Rather than doing it live with some witnesses or
5 some other procedure, we want to make sure Your
6 Honor was okay with that procedure.

7 THE COURT: Well, again, I'm a
8 little reluctant to say, yes, I'm fine with that
9 because I don't know and I'm not meaning to
10 imply you're pulling a fast one, but I don't
11 know what pig is in that poke so it would be
12 helpful for me to know what is the offer of
13 proof you're talking about.

14 If you want to do that outside of
15 the hearing of the jury, then I think that's the
16 right thing to do obviously, but I mean without
17 them in the box I don't want to do side bars for
18 the trial management order. So if you want to
19 make an offer of proof and you want to
20 supplement it with a paper just so you've got
21 what you want in the record for appeal purposes,
22 I don't have a problem with that, but I'd like
23 to know at least in summary fashion what your
24 offer of proof is so I know what you're making a

1 record of, because the likelihood of I'm not in
2 the midst of all that, reading that document but
3 I still want to know what your proof of offer
4 is.

5 Do you understand that?

6 MR. BOVENKAMP: Understood, Your
7 Honor. I propose that we would submit to the
8 Court to file as our offer of proof so we know
9 what we're doing before we do it and if we're on
10 the same page, that's okay. Otherwise, we can
11 do what Your Honor suggested.

12 THE COURT: What I'm asking you to
13 do is if you know what your offer of proof is in
14 a session like this, give it to me. You don't
15 have to cover everything. You can say this is a
16 summary of what we want to file. Now, that will
17 make sense to me if it's a decent summary, if
18 it's two minutes to cover a 25-page paper, that
19 won't do it.

20 What I'm telling you is, no, I
21 want to hear what your offer of proof is because
22 I want to know what it is you're going to be
23 pointing to for the Court of Appeals because if
24 there's a problem and I can deal with it, I want

1 to deal with it.

2 MR. BOVENKAMP: Understood. We
3 will do that, Your Honor. The last housekeeping
4 matters we have is a couple of objections in
5 regards to demonstratives and the last
6 housekeeping matter is with regard to
7 communications with witnesses when they're off
8 the stand. We understand the rules in this
9 court if they are on the stand in the midst of
10 their testimony, we're not talking substantively
11 about their testimony whether it's Cross or not.
12 The question is, for example --

13 THE COURT: Well, hold on. Let me
14 make sure we're clear on that. The rule here as
15 I understand it, as I've enforced it, if they're
16 on the stand under Cross, you can't speak to
17 them. If they are under Direct and you're on
18 break and you want to say we didn't cover that
19 or we didn't cover it the way I'd like to,
20 you're free to talk to your witness off the
21 stand while that witness is on Direct.

22 Once cross begins, you don't get
23 to talk to him about substance of his testimony
24 at all until Cross is concluded. That's the way

1 I've always understood the Delaware rules. I
2 like it and I'm enforcing it, just so we're on
3 the same page.

4 MR. BOVENKAMP: Thank you, Your
5 Honor, for that clarification. I wasn't aware
6 of the nuance to it. The follow-up question to
7 that, and I think you may have answered the
8 question, just so we're all on the same page, we
9 have an expert that does his Direct, gets
10 through Cross and gets through Redirect and is
11 going to go up for rebuttal. It's our
12 understanding we may talk to him about the
13 rebuttal prior to it coming up.

14 THE COURT: The answer is yes.
15 Now, we're not going to be breaking the trial in
16 order for you to have a conference with your
17 client or with your witnesses. So hopefully,
18 there I'm not trying to introduce gamesmanship
19 into this either, that somebody has a severe
20 headache and we have to take a break.

21 MR. BOVENKAMP: Just ordinary
22 course is what I'm talking about.

23 THE COURT: The answer is ordinary
24 course. The rule is when they're on Cross

1 you're not speaking to them on breaks. When
2 they're off Cross, they're your witness.

3 MR. BOVENKAMP: Understood, Your
4 Honor. Thank you for that clarification. We
5 have a few objections to demonstratives,
6 exhibits that we have exchanged the night
7 before. We've met and conferred and haven't
8 been able to reach agreement on that. We would
9 propose to taking it up with Your Honor now if
10 that's okay.

11 THE COURT: Sure.

12 MR. BOVENKAMP: So the first has
13 to do with a slide from the -- it will be easier
14 if I just pass this up to Your Honor.

15 THE COURT: Sure.

16 MR. BOVENKAMP: A slide that was
17 provided to us that's going to be used for
18 animation in Microsoft's opening statement. The
19 first -- and basically to make a long story
20 short, we believe that they're raising a
21 noninfringement argument with regard to the
22 dynamic generation web pages and application
23 server that was not disclosed in the expert
24 report that allows them to present this argument

1 to the jury. It's going to cause Parallel
2 Networks prejudice.

3 THE COURT: All right.

4 MR. BOVENKAMP: Let me briefly
5 outline it for Your Honor. The very first page
6 is a screen shot of their animation and you can
7 see the representation of the web page, the page
8 server.

9 THE COURT: Okay.

10 MR. BOVENKAMP: The next slide
11 shows for their Bing system the process of a web
12 page being generated and if you turn two slides
13 forward, what they're showing is their depiction
14 of a web page occurring at the FrontDoor cert.
15 So the suggestion at least from these slides,
16 and we talked this morning about this with
17 Microsoft, and I think it's consistent with what
18 I'm saying is we're going to tell the jury that
19 web pages are generated at the FrontDoor server,
20 not the application server.

21 They confirmed to us that
22 Dr. Long, their technical expert, is not going
23 to opine that that's a basis for noninfringement
24 but there's little tension there because there's

1 obviously an argument they intend to make,
2 whether it's through their expert but it doesn't
3 appear to be through their expert, but
4 otherwise, there's some significance to the fact
5 that the web page that they allege is generated
6 at the FrontDoor server which is equivalent to
7 the web page mentioned, not the web server so we
8 think that slide is misleading.

9 Their expert is not going to talk
10 about that as a noninfringement position so we
11 don't think that should be shown particularly to
12 the jury upfront.

13 THE COURT: Ms. Brooks?

14 MS. BROOKS: Yes, Your Honor. I
15 think the animation, we want to be precisely and
16 technically accurate. What Dr. Long said in his
17 expert report as far as web pages are
18 constructed within the Microsoft web server and
19 specifically by FrontDoor, he said the same
20 module meaning FrontDoor is also responsible for
21 interface rendering (called hydration) when the
22 response is constructed.

23 And so what happens in our system,
24 Your Honor, is that the data comes from the page

1 server and we might have more than one page
2 server. If Your Honor did a search for pizza,
3 it would know you're searching from Delaware and
4 you would end up getting a page that would show
5 images of pizza plus the various pizza places
6 near you and a map of Delaware, and that
7 information comes from various application
8 servers that data is gathered together and sent
9 to FrontDoor where it's called rehydrated.

10 It's put together essentially, so
11 technically the page itself is not formally
12 constructed until that happens. But because
13 there's no construction as to what it means to
14 generate a web page, we're not arguing that,
15 therefore, they call page servers what we call
16 application servers are not generating the web
17 page because they are indeed putting all that
18 information together, but it doesn't get
19 technically rehydrated until it's in FrontDoor.

20 So if we did it the way they want
21 us to do it, it would not be an accurate
22 representation of how our system does it nor how
23 Dr. Long says it does it.

24 THE COURT: What you just read to

1 me, that's from Dr. Long's report?

2 MS. BROOKS: Yes, Your Honor, at
3 Paragraph 96.

4 THE COURT: All right. Their
5 concern obviously is even if Dr. Long doesn't
6 say it's not infringing, it will sure show an
7 argument for noninfringement, that basis for
8 that concern. Are you going to be making even
9 by implication asserting to this jury that they
10 look at this all happening here and it's not
11 infringing?

12 MS. BROOKS: Absolutely not, Your
13 Honor. In fact, what my plan is even in opening
14 to have the claim and to cross out which parts
15 of the claim we do not meet and that isn't one
16 of the parts.

17 THE COURT: All right. Well, let
18 me hear from, Mr. Bovenkamp.

19 MR. BOVENKAMP: Your Honor, so
20 while I'm very happy to hear it's not going to
21 be an argument, but the problem remains if you
22 look at that slide and look at how they're going
23 to contrast our invention with Figure 4 of that
24 representation of what is clearly a web page

1 that comes into the existence of a page server
2 versus what they do with Bing, what they
3 represent as the web page clearly comes into
4 existence for the first time at the FrontDoor
5 server that is misleading.

6 Setting aside what Ms. Brooks is
7 going to say, that has potential for causing
8 confusion with the jury, particularly then down
9 the road when their fact witnesses start talking
10 about it.

11 THE COURT: I got you. I'm going
12 to grant Mr. Bovenkamp's application. Just take
13 those slides out. It's not going to hurt you
14 that much. Don't show it to them. That doesn't
15 mean you can't show the thing from the patent,
16 right? The figure from the patents clearly you
17 can show that. Nobody has a basis for argument
18 against that and you can speak factually and
19 accurately of what the system does. I'm not
20 suggesting you can't do that. Indeed I'm
21 grateful that you're at pain to make sure what
22 the jury hears of how the system actually works,
23 so leave the slides out.

24 MS. BROOKS: We don't have a

1 problem, Your Honor. If I can seek
2 clarification?

3 THE COURT: Go ahead.

4 MS. BROOKS: It's actually an
5 animation. So if we remove that one part of
6 when the pages come together, can we show the
7 animation because that's their only objection,
8 that one part of the animation?

9 THE COURT: I'm looking at a
10 static page so it's a page shot. Just get it
11 out, whatever that page shot is.

12 MS. BROOKS: Will do, Your Honor.
13 Thank you.

14 THE COURT: Mr. Bovenkamp?

15 MR. BOVENKAMP: One other issue
16 with regard to the opening slide of Microsoft.
17 I was able to figure out the camera and put this
18 up on the screen. This is from their opening
19 slide and it's talking about Microsoft's Early
20 Solution. As the Court knows from the summary
21 judgment briefing, the primary reference that
22 they're relying upon is the MSN 1.0 system as it
23 existed on August 24, 1995.

24 It's an obviousness case. It's

1 not an anticipation case. We resolved that at
2 summary judgment. We believe that this slide
3 going from the 1993 date in timeline form to an
4 MSN spec to an MSN patent to more patents being
5 filed in timeline form to finally this Windows
6 95 box and then contrasted with filing of our
7 patent application suggests to the jury that
8 each one of those things is potentially
9 invalidated and what clearly is the case,
10 acknowledged by their expert, he explained by
11 that they refer to as the MSN spec or MSN
12 patents as prior art.

13 He unequivocally says all I'm
14 relying upon is August 24, 1995, that system.
15 That's it. And so it's to suggest to the jury
16 up front these other patents and other documents
17 have some date significance with regards to our
18 invention, risks injecting 102(a) type arguments
19 whether they're explicitly made or not, Your
20 Honor.

21 THE COURT: Understood, I get your
22 argument.

23 MS. BROOKS: Thank you, Your
24 Honor.

1 Once again, since the Elmo is on,
2 before we get into that, we show the jury this,
3 which is our fact witness, Bill Griffin, and we
4 explain who he is. And that he will then
5 describe for the jury our early work -- sorry,
6 Your Honor, I should use my own PowerPoint's
7 here.

8 It's our early work on -- I have
9 the wrong slide deck. It just has the
10 demonstratives. It shows that the Marvel
11 specification. What Mr. Griffin is going to
12 talk about, he was one of the authors of that
13 specification, and that's when at this time
14 frame -- let me put the timeline back up. At
15 this time frame, and our expert does discuss the
16 specification, in fact, has information from it
17 that does help inform his opinion. He is not
18 saying it's invalidating prior art, but the
19 information in here shows that as early as
20 October 1994, Microsoft recognized the problem
21 and the need to do load balancing. It's just
22 part of the story.

23 If you note, our title isn't
24 anything about invalidity, our title is this is

1 Microsoft's early solution to load balancing and
2 we're telling the story through Mr. Griffin.

3 THE COURT: Why don't you remind
4 me, Ms. Brooks, about what Mr. Long said.
5 Mr. Bovenkamp said that he explicitly disclaims
6 any reliance on those other things as prior art.

7 MS. BROOKS: I disagree with that,
8 Your Honor. He, in fact, discusses them at
9 length, most of his analysis comes from the
10 information that's in the specification and in
11 the patent where it talks about -- so the
12 specification identifies the problem to be
13 solved and then the patent describes how it was
14 solved, but the system itself is what he's using
15 as the invalidating prior art.

16 But he certainly doesn't say I am
17 not looking at or relying on the specification
18 or the patent, he uses it and actually cites it
19 quite a bit. But what his invalidity analysis
20 is here is the system and he does an
21 element-by-element analysis based on what's in
22 the system.

23 THE COURT: Okay. I understand
24 your position.

1 Mr. Bovenkamp, I'll give you a
2 chance to respond.

3 MR. BOVENKAMP: Just briefly.
4 I'll show you places in the report that I was
5 referring to just so we're clear. I apologize
6 for my marks on it.

7 If you look, for example, at
8 paragraph 77, this is in Dr. Long's rebuttal,
9 his opening invalidity report, he refers to the
10 MSN patents which is one of the documents that
11 was shown up there, he says my analysis does not
12 use them as separate prior art references in
13 their own right, but rather as a properation for
14 what the MSN system does.

15 Likewise in 78, I use the
16 Microsoft internal documents in the same way to
17 flesh out the MSN systems. We're not disputing
18 he can talk about those documents presented at
19 trial, all we are disputing is the way he can
20 use them in a timeline.

21 THE COURT: Thanks for putting
22 that up. I have had a chance to read that off
23 the Elmo and I'll deny that application. You'll
24 have a chance -- I understand that they're not

1 going to be saying that they're prior art,
2 they're going to be telling a story how they get
3 to the invalidating reference, I think it's fair
4 for them to be able to go ahead and put that up
5 and let the jury see it. To the extent you're
6 worried about confusion, you'll have a chance to
7 make sure that is not confusing by your
8 examination.

9 MR. BOVENKAMP: Thank you, Your
10 Honor.

11 Last matter, thankfully.

12 There had been discussion before
13 in the context of the Mills and the precharge
14 comps in terms of Microsoft's use of orders from
15 previous cases, I think even the last comps that
16 we had there was a reference to them.

17 We have been advised by Microsoft
18 that they're going to refer in opening to
19 various claim construction orders and other
20 proceedings that occurred in other cases. We
21 believe that reference, at least the claim
22 construction orders and the significance of
23 those is going to be confusing given that the
24 jury is also going to have a claim construction

1 order from this Court that they're going to
2 apply and that there is no reason whatsoever for
3 that to come in.

4 The only basis that we're aware of
5 Microsoft is asserting those are relevant is for
6 wilfulness. Willfulness is based upon their
7 subjective mindset and they haven't put a
8 witness forward that said he or she relied upon
9 that particular claim construction issue that
10 we're aware of that was provided in the
11 discovery. So we think that there is no
12 relevance to any, you know, claim construction
13 orders or proceedings based on those and that
14 would do nothing but confuse the jury in this
15 case. We want to bring that to the Court so we
16 can potentially address that now.

17 THE COURT: Got you.

18 Ms. Brooks.

19 MS. BROOKS: Thank you, Your
20 Honor. As the Court may recall, we had brought
21 a motion to phase willfulness and our argument
22 was if we didn't do that, our defense about
23 wilfulness is how we never believed we
24 infringed. And there was a case in Delaware

1 where we sued them and then they transferred it
2 to Texas and then they sued us in Texas and
3 there was a claim construction in Texas where
4 they got concerned that their patents might get
5 invalidated so they dismissed in Texas and how
6 they sued us in Delaware and now here we are.

7 And Your Honor said we might like
8 to get that in, and I said yes. I'm concerned
9 the jury might also think we're trying to avoid
10 letting them have their day in court, but Your
11 Honor said, you denied the motion for phasing,
12 and said it's fair game if that's the defense,
13 if that's the kind of Pandora's box that's going
14 to get opened by their wilfulness, so be it.

15 Depending on what they say in
16 opening, I don't know what they're going to say
17 in wilfulness, I do have a couple of blowouts
18 from the other proceeding saying that we brought
19 the declaratory judgment on --

20 THE COURT: What is it that you
21 are going to put in front of the jury?

22 MS. BROOKS: I will show you, Your
23 Honor. They're quite benign.

24 This is one, this is just showing

1 our declaratory judgment being filed on November
2 19, 2008. This is the case in Texas getting
3 dismissed in August of 2012. And then this is
4 the deposition testimony of Mr. Fokas explaining
5 why they decided to dismiss it. And that's it,
6 Your Honor. But I don't use it, it really
7 depends on what they say on that issue.

8 THE COURT: Okay. Thanks. Do you
9 have anything to say, Mr. Bovenkamp?

10 MR. BOVENKAMP: I have nothing
11 else to say, Your Honor.

12 THE COURT: Your application is
13 denied. If you're making a willfulness case, I
14 think they're entitled to give the history of
15 the litigation between the parties and argue
16 it's not willful. You make the charge and they
17 get to put in their proof of why it isn't.

18 Okay. And is there anything from
19 your side of the table?

20 MS. BROOKS: Just one, Your Honor.

21 There were very few demonstratives
22 we got from Parallel Networks, but this is one
23 of them, and we are argued that it's
24 argumentative and doesn't belong in an opening.

1 MR. BOVENKAMP: Your Honor, we're
2 withdrawing that.

3 MS. BROOKS: I'm sorry, nobody
4 told me.

5 MR. BOVENKAMP: Sorry.

6 THE COURT: No, that's the best
7 kind right there, you worked it out.

8 All right. Well, I have something
9 I want to make sure that I'm squared away on. I
10 got a revised preliminary jury instruction set
11 that was delivered to me this morning.
12 Apparently it was submitted over the weekend.

13 We generated a red line so that we
14 could see what was the difference and as an
15 aside, let me just say, it will always help me
16 if you're giving me another version of a
17 document if you folks will tell me, hey, this is
18 the only difference or these are the differences
19 and here is a red line demonstrating that, then
20 we don't have to do what we had to scramble to
21 do this morning which is get ahold of the
22 electronic copy, the old one and run it against
23 the electronic copy of the new one, generate the
24 red line and understand what's going on.

1 It looks like from our compare
2 from the two documents that the only changes in
3 the listing of the patent claims at issue, is
4 that correct? Did we figure that out right?

5 MR. BOVENKAMP: I think that's
6 correct, Your Honor.

7 MS. HUFNAL: Yes, Your Honor.

8 THE COURT: Okay. Thanks for
9 verifying that.

10 All right. And I also wanted to
11 note that with respect to the revised proposed
12 voir dire questions, there was a question
13 submitted by Microsoft, I think in their new one
14 -- there was a significant -- it was basically a
15 rephrasing of the question that I told you you
16 couldn't have before in the former version, the
17 way it had been framed was I think in a dispute
18 between a big company and a small company, are
19 you inclined to favor the little company. And
20 the revised one, do you have negative
21 impressions or distrust of a large corporation
22 or any other belief causing favor of a small
23 corporation over a large corporation. I'm not
24 giving that. So I'm not going to ask that

1 question.

2 Otherwise, I will be -- and that
3 was question 11.

4 Otherwise, I will be using the
5 submission of March 15, 2017 as the version from
6 which I read. If that's not the latest and last
7 version, you need to let me know because that's
8 what I thought was the latest and last version,
9 and that's what I'll be using. Okay?

10 All right. If there is nothing
11 else, I'll go ahead and leave the bench here and
12 we'll be ready to bring the veneer in and begin
13 jury selection. You all good? Anything else we
14 need to cover?

15 MR. BOVENKAMP: Nothing else, Your
16 Honor.

17 THE COURT: Then we'll recess for
18 the veneer.

19 (A brief recess was taken.)

20 THE COURT: Good morning, ladies
21 and gentlemen. Thanks for being here. Please
22 be seated.

23 I appreciate everybody being here.
24 My name is Kent Jordan, and as the court deputy

1 said, and I'm going to be presiding over the
2 trial for which we will be picking a jury this
3 morning.

4 The name of the case is Parallel
5 Networks Licensing, LLC, plaintiff versus
6 Microsoft Corporation as the defendant. And I'm
7 going to refer to these parties as Parallel
8 Networks and Microsoft for short.

9 This trial may last up to five
10 days. I timed the trials, that is each side has
11 a certain number of hours within which they can
12 present their evidence and arguments. And the
13 attorneys have to complete those presentations
14 within those time limits, however, the jury
15 deliberations may require you to be present
16 longer than the scheduled five days, just
17 depends on how the jury deliberations go.

18 The trial days typically run from
19 9:00 a.m. to 4:30 p.m. I'm telling you all this
20 because I'm about to ask you a series of
21 questions. The purpose of which is first to
22 enable me to determine whether or not any of you
23 as prospective jurors should be excused for
24 cause, and the second is to enable the counsel

1 for the parties to exercise their individual
2 judgment with respect to preemptory challenges,
3 that is challenges for which reason need be
4 given by counsel for which someone ought not
5 serve on the jury.

6 If you answer yes to any of the
7 questions that I'm going to ask, what I want you
8 to do is just keep that yes in your mind, all
9 right, I'll ask all the questions you keep track
10 in your mind whether you had an affirmative
11 answer to one or more of the questions. When I
12 finish reading that, I'm going to ask for a show
13 of hand for anybody that had an affirmative
14 answer to any of my questions.

15 When I've done that, I'm going to
16 call any of you who had an affirmative answer to
17 any of these questions up to the bench
18 individually one at a time where I can speak
19 with you with counsel present about those
20 particular questions as to which you had an
21 affirmative response. Okay?

22 All right. First I'm going to ask
23 the courtroom deputy clerk to administer the
24 oath to the panel.

1 THE CLERK: Members of the jury
2 panel, please rise and raise your right hands.

3 You and each of you do solemnly
4 swear, those of you who swear, and you and each
5 of you do affirm, those of you who affirm, that
6 you will true answer make to such questions that
7 may be asked you touching the matter now before
8 the court, so help you God, those of who do
9 swear, and you do so affirm, those of you who
10 affirm.

11 The appropriate response is I do.

12 THE JURY: I do.

13 THE CLERK: Thank you. You may be
14 seated.

15 THE COURT: Here are the
16 questions. Bear with me.

17 Do you have any personal knowledge
18 of this case or have you read or heard it
19 discussed or have an opinion about this case?

20 Number two. You have been given a
21 list of companies involved in this case. At
22 least I hope you have. I just gave you the name
23 of the two companies involved in the case so you
24 know who they are.

1 Have you, a family member or a
2 close friend ever worked for either of these
3 companies?

4 Are you personally acquainted with
5 any officer, director or employee of any of
6 these companies?

7 Have you ever owned any stocks or
8 bonds in any of these companies or relied
9 financially in any way on any of those
10 companies?

11 You have been given a list of the
12 attorneys and law firms involved in this
13 litigation. I haven't introduced them to you,
14 but beforehand, you should have received that
15 information.

16 And I'm slightly off script here,
17 but I'm going to just make sure you have this
18 information. I'm going to have each side
19 introduce the people at counsel table.
20 Mr. Cawley, would you mind doing that on behalf
21 of your team --

22 MR. CAWLEY: Of course, Your
23 Honor.

24 THE COURT: -- for the benefit of

1 the panel.

2 MR. CAWLEY: Mr. Adam Poff.
3 Angela Vorpahl. Christopher Bovenkamp. And my
4 name is Douglas Cawley.

5 THE COURT: Thank you very much,
6 sir. These are the attorneys for Parallel
7 Networks.

8 Ms. Brooks, can I ask do you the
9 same for Microsoft.

10 MS. BROOKS: Thank you, Your
11 Honor. Good morning. My name is Juanita
12 Brooks. And this is my colleague, Martina
13 Hufnal and we're from the law firm of Fish &
14 Richardson.

15 THE COURT: Thank you very much.
16 All right. Are you related to or
17 personally acquainted with any of these
18 attorneys?

19 Have you ever been represented by
20 any of these attorneys or other associates or
21 members of the listed law firms? And the law
22 firms again are for Parallel Networks, McKool
23 Smith, and also for Parallel Networks Young,
24 Conaway. And for Microsoft, Fish & Richardson.

1 So I'll repeat, have you ever been
2 represented by any of these attorneys or other
3 associates or members of their law firms who are
4 involved in this case, whether in this case or
5 in another case where these firms have
6 represented another party?

7 Third, have you been -- you have
8 been given a list of individuals who might
9 appear as witnesses in this case. Are you
10 related to or personally acquainted with any of
11 those individuals?

12 Fourth, have you or any member of
13 your household ever been educated, employed,
14 trained or had any experience in computer
15 hardware, computer software or electronics
16 engineering?

17 Fifth. Are you unwilling or
18 uncomfortable deciding a case involving such
19 technology if chosen to be a juror in this case?

20 Six. Have you ever worked for a
21 company that had patented products or processes?

22 Seven. Do you have any knowledge
23 about or experience with patents including
24 applying for a patent?

1 Eight. Have you ever been
2 involved in the development of a new product or
3 process or applied for a patent?

4 Nine. Have you, a family member
5 or a close friend had any dealings with the
6 United States Patent and Trademark Office?

7 Ten. Do you have strong opinions
8 about the United States patent system or about a
9 patent granting exclusive rights to the
10 inventors or their employer?

11 Eleven. Have you ever served as a
12 juror in a civil lawsuit or a criminal action?

13 Twelve. Have you ever been a
14 plaintiff, a defendant, or a witness in a civil
15 lawsuit or criminal action?

16 Thirteen. Do you have, or do you
17 know anyone else in the courtroom today?

18 Fourteen. Do you know of any
19 reason whatsoever why you could not sit as a
20 trial juror with absolute impartiality to the
21 parties in this case?

22 Fifteen. Now that I have told you
23 the trial schedule, is anyone unable to serve on
24 this jury for five days or more if necessary?

1 Sixteen. Do you have any special
2 disability, medical condition or other problem
3 that would make serving as a member of the jury
4 difficult or impossible?

5 That was sixteen. Seventeen. Is
6 if -- is anyone not proficient in reading,
7 writing or understanding English?

8 Eighteen. Does anyone have child
9 care or other responsibilities that will make it
10 difficult or impossible to serve on this jury
11 during the trial schedule?

12 Nineteen. Do you know of any
13 other matter which you believe should be called
14 to the Court's attention as having some bearing
15 on your qualifications or ability to sit as a
16 juror or which you think may prevent you from
17 rendering a fair and impartial verdict based
18 solely on the evidence and my instructions to
19 you on the law?

20 Twenty, does anyone not use a
21 computer or the internet on a regular basis?

22 Twenty-one. Do you or anyone
23 close to you work for a computer software or
24 hardware company or have a family member or

1 close friend who does?

2 Twenty-two. Has anyone ever set
3 up a computer network or website at home, at
4 work or both?

5 Twenty-three. Does anyone have
6 any education or training in accounting,
7 economics or actuarial sciences?

8 Twenty-four. Do you or anyone
9 close to you work for a law firm, legal aid
10 society, state or federal court, department of
11 justice or regulatory legal body?

12 Twenty-five. Have you or a member
13 of your immediate family or anyone close to you
14 ever invented, developed or patented an
15 invention whether part of employment or outside
16 of work that you, a family member or someone
17 close to you believed was deserving of patent
18 protection from the US government?

19 Okay. Those are the questions.
20 Can I see by show of hands those of you that had
21 a yes to one or more of those questions for any
22 reason whatsoever. All right. Thanks.

23 Here is what we're going to do.
24 We'll proceed front row toward the back, moving

1 from the aisle to the wall and just bring you
2 up, one at a time, ask you to please be patient,
3 bear with us, the process takes a little time,
4 but that's what we need to do in order to get a
5 jury picked that can be fair and impartial and
6 can serve.

7 I'll see counsel at side-bar.

8 We're just going to -- we're going
9 to put on a little white noise in background so
10 that our conversations up here with you are
11 going to be private. Okay. In case anybody has
12 got something they want to say that they would
13 rather not have everyone in the courtroom hear.

14 (Side-bar.)

15 THE COURT: First let me ask, is
16 there any issue with the voir dire presentation
17 and questions as given to the jury? Mr. Cawley?

18 MR. CAWLEY: No.

19 MS. BROOKS: No, Your Honor.

20 THE COURT: All right. Okay.

21 Then I will ask, we'll part the red sea. From
22 the first row, the first individual who had a
23 yes to any one of my questions, if you raised
24 your hand, please come forward, ma'am.

1 Come right in. It's sort of like
2 walking in the lions den. Don't be afraid. I
3 need you to state your name for the record.

4 JUROR: Lindsay DiSabatino.

5 THE COURT: Do you have a juror
6 number? Do you remember that.

7 THE CLERK: 11.

8 THE COURT: Number 11.
9 Ms. DiSabatino, you said yes to one or more of
10 my questions. Can you tell me.

11 JUROR: I have a couple. I work
12 for Extensor which is a global consulting firm
13 and Microsoft is one of our alliance partners.
14 I also am computer literate and I
15 do have a patent pending. We submitted it last
16 year. It's an algorithm. I have a global
17 workshop conference which I'm hosting. We have
18 people from India, so they're key stakeholders,
19 and they would like for me to be in attendance.

20 THE COURT: When is that going to
21 be?

22 JUROR: It starts Wednesday.

23 THE COURT: This Wednesday. Let's
24 go through each of those things, Ms. DiSabatino.

1 First, the fact that Extensor has
2 got a business relationship, and apparently a
3 strong one with Microsoft, would that make it
4 difficult for you to just decide a case
5 involving Microsoft on the evidence here or
6 would you feel like --

7 JUROR: I think I would be
8 knowledgeable and being in the consulting
9 industry, I don't think it would make me bias.

10 THE COURT: That's the question.
11 That's the first question.

12 JUROR: I'll be informed.

13 THE COURT: You would be informed,
14 but could you say look, if the evidence is
15 against Microsoft, I'm finding against
16 Microsoft?

17 JUROR: No, it doesn't influence
18 my paycheck, so I could be objective.

19 THE COURT: Now, you are
20 knowledgeable and you say you actually do some,
21 computer literate and you work with computers.
22 Would you be able to hear the evidence in this
23 case on the basis of the evidence as it's
24 presented, and do you think you could be fair in

1 assessing that evidence in light of your own
2 experience?

3 JUROR: Yes.

4 THE COURT: All right. Tell me
5 about this conference that you have got people
6 coming in for, if you don't mind. How many
7 people are involved? What's your role in it?

8 JUROR: Sure. It's twelve people
9 and I am actually the lead of this algorithm and
10 we're trying to get our India delivery center so
11 we have key stakeholders that are flying in for
12 it.

13 THE COURT: And the patent that
14 you're working on, is that through Extensor with
15 colleagues?

16 JUROR: Yes, there is about six of
17 us that have names on it. I don't know if it
18 will be approved for another four years.

19 THE COURT: Have you had any
20 experience with the patent system that would
21 bias you for or against patentholders?

22 JUROR: No. But I filled out the
23 application and I'm familiar with patents.

24 THE COURT: Thank you very much.

1 Mr. Cawley, anything from you?

2 MR. CAWLEY: I don't have anything
3 further.

4 MS. BROOKS: One question since
5 you do have a patent pending and Parallel
6 Networks is the patentholder in this case
7 asserting the patent against Microsoft, do you
8 think that might bias you in any way in favor of
9 Parallel Networks and against Microsoft?

10 JUROR: I missed the question.

11 MS. BROOKS: I know, that was a
12 really bad question. I'll try it again. So the
13 fact that you have a patent pending --

14 JUROR: Yes.

15 MS. BROOKS: -- in this case,
16 Parallel Networks is the patentholder, and
17 they're asserting their patents against us. The
18 fact that you may potentially become a
19 patentholder, do you think that might cause you
20 to favor Parallel Networks over Microsoft?

21 JUROR: I mean, I don't know. I
22 would have to hear it, the facts in the case.

23 MS. BROOKS: Thank you.

24 THE COURT: Thank you so much,

1 Ms. DiSabatino. Please take your seat.

2 Applications, any applications to
3 strike for cause?

4 MR. CAWLEY: I don't hear cause
5 there, Your Honor. We have no objection to
6 striking her since she's got this conference
7 going on, and probably is a hardship in that
8 sense.

9 MS. BROOKS: No application, Your
10 Honor.

11 THE COURT: All right. Here is
12 what we're going to do, we're going to keep her
13 in the pool for now. I'm inclined to strike her
14 for cause because I think she's got people
15 flying in from around the world, and it does
16 occur to me since she is actually leading the
17 team it would be a hardship for her to sit. I
18 may have to ask her, I should have thought to
19 ask her if there are people who can fill in and
20 take control for her. If we get jammed up on
21 the people we have got left, we may have to ask
22 her another question or two. We'll leave her in
23 the pool, but the likelihood is on my own
24 application we'll strike her for cause.

1 All right. The next gentleman,
2 please come forward.

3 And I'm counting on all of you to
4 help remember the thing I just said.

5 Hi. Thanks for coming forward,
6 sir. Can I have your name for the record,
7 please?

8 JUROR: Michael Molitor.

9 THE COURT: Mr. Molitor, do you
10 remember your juror number?

11 JUROR: 26.

12 THE COURT: 26. Thank you.

13 Okay. Mr. Molitor, you said yes
14 to one or more of my questions. Can you tell us
15 about that, please.

16 JUROR: Yeah, I worked with
17 DuPont. I worked at the experimental station.
18 I run a research facility and I have got four
19 patents awarded in my name.

20 THE COURT: Right.

21 JUROR: Just to bring it up.

22 THE COURT: That's important for
23 us to know. Any other questions you said yes
24 to?

1 JUROR: No.

2 THE COURT: Let's inquire about
3 that a little bit. First the fact that -- and
4 congratulations you have got a few patents
5 awarded in your name. Is there anything in your
6 experience with the US patent system that would
7 bias you for or against a patentholder?

8 JUROR: I don't think so.

9 THE COURT: Okay. And the point
10 of my question is just this, the fact that you
11 hold a patent, would that prevent you from
12 looking dispassionately, that is fairly, at the
13 evidence that both sides present to decide the
14 issues in this case which deal with infringement
15 and invalidity, could you look at that and be
16 fair to both the patentholder in this case,
17 Parallel Networks, and the person challenging
18 the patent, Microsoft, do you think you could do
19 that fairly?

20 JUROR: Yes, I think I can, you
21 know. I have got a couple -- I have seen how
22 close they are to one another, how do they all
23 come out like that anyway, because there is
24 really not much difference in some of the work

1 I'm doing. And I'm how can I have so many
2 patents out there, because somebody took an
3 envelope and flipped it this way, and then
4 somebody got a patent for it.

5 THE COURT: You would be open to
6 the idea that some patent could rightly be
7 challenged is what you're saying?

8 JUROR: Yeah.

9 THE COURT: But the same token,
10 you're also open to the idea that patents are a
11 grant from the government which a party has a
12 right to assert and they have a right to be
13 heard on that?

14 JUROR: Oh, yeah.

15 THE COURT: So the bottom line is,
16 you're open to hearing both sides of that
17 question and dealing with it fairly?

18 JUROR: Yes, I think so.

19 THE COURT: All right.

20 Mr. Cawley, anything further?

21 MR. CAWLEY: Thank you, Judge.

22 Mr. Malitor, do you own your patents or did you
23 assigned them to DuPont?

24 JUROR: DuPont gets everything.

1 Okay. Yeah, I got a paycheck.

2 MR. CAWLEY: And forgive me if you
3 may have said this already, but I missed it if
4 you did. What is it that your patents cover?

5 JUROR: Polymers.

6 MR. CAWLEY: Polymers.

7 JUROR: Or the process.

8 MR. CAWLEY: You did say that.

9 JUROR: One of the processes I
10 designed, with a couple of colleagues.

11 MR. CAWLEY: Okay. Thank you.
12 That's all the questions I have.

13 THE COURT: Ms. Brooks.

14 MS. BROOKS: Thank you. So the
15 fact that you are a patentholder, in this case,
16 Parallel Networks is asserting their patents
17 against Microsoft. Do you think the fact that
18 you're a patentholder might cause you to favor
19 Parallel Networks over Microsoft?

20 JUROR: I don't know. I don't
21 think so. I don't think so.

22 MS. BROOKS: And one of the
23 defenses that Microsoft has in this case is that
24 Parallel Networks's patent is invalid, that it

1 should not have been granted. The fact that
2 you're a patentholder, do you think you might
3 have difficulty, without hearing the facts, just
4 the concept of it, would you have problems with
5 that?

6 JUROR: I guess you would have to
7 prove they are invalid. Right?

8 THE COURT: That's the point. And
9 that's what I was trying to ask. You'll hear
10 evidence. I don't think counsel here is trying
11 to get you to say that right now which side you
12 would come down on, but that you'll hear it and
13 be fair, that's the question.

14 JUROR: Yes. Yes.

15 THE COURT: All right. Anything
16 else?

17 MS. BROOKS: No, thank you.

18 THE COURT: Thank you very much,
19 Mr. Molitor.

20 Applications.

21 MR. CAWLEY: No, Your Honor.

22 MS. BROOKS: Yes, Your Honor. He
23 hesitated a really, really long time when I
24 asked if he would favor Parallel Networks, a

1 really long time.

2 THE COURT: Well, I'll take a
3 little issue with that. I'm not sure he
4 hesitated a really long time, although he did
5 hesitate. And I don't know whether that's
6 because he didn't understand the question or
7 because there is really a doubt in his mind. So
8 I'm not striking him for cause. I think he can
9 do just what he said, be fair and impartial.

10 All right. Next person on that
11 row who had a yes to one or more of my
12 questions, please come forward.

13 Come right up, please. Thank you,
14 sir. First I need your name for the record,
15 sir.

16 JUROR: Herschel Moore.

17 THE COURT: Mr. Moore, your juror
18 number.

19 JUROR: 27.

20 THE COURT: Mr. Moore, you had a
21 yes to one or more of the things I asked. Can
22 you tell me about that.

23 JUROR: One of the main things is
24 my work schedule. It's my busy time of the

1 year, maintenance at a campground, so I probably
2 won't have a job if I have to take five days
3 off.

4 THE COURT: Okay. Well, we'll
5 talk to you about that a little bit more in a
6 moment. Were there anymore questions that you
7 had a yes to?

8 JUROR: Yeah, I have like 80
9 percent hearing loss in this ear, and I have a
10 very hard time hearing you guys.

11 THE COURT: Your other ear is
12 good?

13 JUROR: It's fair.

14 THE COURT: Does that cover all
15 the affirmative answers you had?

16 JUROR: Yes.

17 THE COURT: As to that first one
18 you're concerned about work. Do you work for a
19 company or do you contract?

20 JUROR: For a company.

21 THE COURT: Who do you work for?

22 JUROR: Tall Pines Campground.

23 THE COURT: And you have a concern
24 that if you take five days off, your employment

1 will be at risk?

2 JUROR: Yes.

3 THE COURT: Without wanting to get
4 too far into it, do you have people who work
5 with you who also work on the maintenance?

6 JUROR: Yes, we're like two guys
7 short right now.

8 THE COURT: You're a salary?

9 JUROR: No.

10 THE COURT: How, they pay you by
11 the hour?

12 JUROR: Yes.

13 THE COURT: And with your hearing
14 issue, with amplified sound, can you hear
15 reasonably well?

16 JUROR: Fair.

17 THE COURT: Okay. All right.
18 That's helpful. Thank you.

19 Mr. Cawley.

20 MR. CAWLEY: I have no questions
21 of this juror.

22 MS. BROOKS: No questions.

23 THE COURT: Thank you, Mr. Moore.
24 I appreciate it.

1 Mr. Cawley, applications?

2 MR. CAWLEY: No, Your Honor.

3 MS. BROOKS: I ask that he be
4 excused, Your Honor, because of a combination of
5 being worried that he's going to loose his job
6 and he certainly isn't going to get paid because
7 he gets paid by the hour, and the hearing I
8 think makes him significantly less than an
9 optimum juror.

10 THE COURT: I'm inclined to agree.
11 I'm concerned about his obvious concern about
12 his employment. Not a big employer apparently,
13 isn't able to absorb the loss of an employee,
14 I'll excuse him for cause.

15 All right. Anybody else on that
16 first row that had a yes to one or more of my
17 questions?

18 Okay. Next row back, beginning at
19 the aisle, first person that had a yes to one or
20 more of my questions, please come forward.

21 Good morning, sir. Come right in.
22 Can you give me your name for the record.

23 JUROR: Jason Barber.

24 THE COURT: Jason Barber.

1 JUROR: Correct.

2 THE COURT: Mr. Barber, do you
3 remember what your jury number was?

4 JUROR: Four.

5 THE COURT: You answered yes to
6 one or more of my questions. Please tell me.

7 JUROR: The first question was
8 have you ever had any training in computers? I
9 went to school for it. I was a network
10 administrator, built computers. And the second
11 one was, have you ever built or been on a
12 website. I run one at the moment. The third
13 question, is there any hardships.

14 Well, my wife being on workman's
15 comp, it's really tough. And like I said, I got
16 a few bucks in my bank account and I'm also an
17 emergency dispatch operator with Security
18 Instrument. We're also short staffed. That
19 would cause a workplace issue as well, so there
20 is quite a few things.

21 THE COURT: Is there anything
22 else, not that those are aren't important, but I
23 want to make sure I have the full universe
24 before I start asking.

1 JUROR: No, that's correct.

2 THE COURT: First as to your
3 personal knowledge about computers and how
4 computers work and how websites work, this is a
5 patent case. Parallel Networks owns some
6 patents about websites and Microsoft is accused
7 of infringing. They have got defenses against
8 infringement that they want to tell the jury
9 about. And they also have an affirmative
10 defense about invalidity, that the patent is not
11 valid. That's sort of the lay of the land that
12 the jury is going to be asked to take a look at
13 and make some judgements about.

14 Does the fact that you have
15 training and know about computers, do you think
16 that would keep you from being fair and
17 impartial if you were selected, could you hear
18 both sides?

19 JUROR: I could, yeah.

20 THE COURT: Nobody would be asking
21 you to forget what you know, but what they would
22 be asking to you do is to be open minded and
23 fair about the arguments and the evidence they
24 want to put in.

1 JUROR: I could do that.

2 THE COURT: Now, as to your --
3 let's talk about first your personal financial
4 situation. Don't worry, I won't get into it
5 personally, but you said your wife is on
6 worker's comp?

7 JUROR: Yeah.

8 THE COURT: And you said that
9 could be hard.

10 JUROR: She's only getting 80
11 percent of her pay at the moment, and we were
12 barely making it when she had a hundred percent,
13 so I'm working overtime once a week just to make
14 it.

15 THE COURT: And your work is as an
16 emergency dispatcher?

17 JUROR: Yes, that's correct.

18 THE COURT: And would your
19 workplace cover you or pay --

20 JUROR: No.

21 THE COURT: -- pay you your salary
22 regardless?

23 JUROR: No.

24 THE COURT: Who do you work for?

1 JUROR: Security Instrument. It's
2 like ADT. When somebody breaks into the house,
3 we call the police and stuff like that.

4 THE COURT: And there is no paid
5 leave?

6 JUROR: No.

7 THE COURT: Okay. And then I
8 think you also mentioned that the company is
9 short staffed.

10 JUROR: Correct, they are short
11 staffed. We're supposed to have four, we have
12 three currently.

13 THE COURT: Okay. Mr. Cawley,
14 questions?

15 MR. CAWLEY: Sure. Mr. Barber,
16 you said you used Microsoft products?

17 JUROR: Uh-huh.

18 MR. CAWLEY: What sort of level of
19 familiarity do you have with those?

20 JUROR: I have used everything
21 from Windows 3.1 to Windows 10, you name it,
22 Microsoft Excel, the whole gamut.

23 MR. CAWLEY: In addition to those,
24 the application, do you work on servers, for

1 example?

2 JUROR: Yeah, I have built
3 computers, servers. I used Microsoft for that.
4 Microsoft motherboards and stuff like that.

5 MR. CAWLEY: Do you have good
6 experience with Microsoft?

7 JUROR: Yeah, Microsoft has been
8 fine. I have never had a problem with them,
9 really.

10 MR. CAWLEY: Do you think that the
11 experience that you have might influence you in
12 thinking about how -- I asked him if he thought
13 that his familiarity and use of Microsoft
14 products might cause him to think that Microsoft
15 was innovative and might he have a difficult
16 time being objective about that?

17 JUROR: I would hope not.

18 MR. CAWLEY: Thank you.

19 THE COURT: Ms. Brooks.

20 MS. BROOKS: Good morning. My one
21 question is do you think that because you have
22 such a concern about your work, that while this
23 trial is going on you might be so preoccupied
24 with that that you might have trouble listening

1 to the evidence?

2 JUROR: I would hope not. I would
3 try not to.

4 MS. BROOKS: Thank you.

5 THE COURT: Thank you very much.
6 Applications.

7 MR. CAWLEY: We move that he be
8 stricken for cause, Your Honor. I think he -- I
9 might have missed this, but I think that he
10 teared up when he was describing his financial
11 difficulties. And I'm afraid that's going to be
12 a real hardship on him.

13 THE COURT: Okay. Ms. Brooks?

14 MS. BROOKS: That's why I asked
15 the question I did because I wasn't sure if he
16 had a cold or he really was becoming very
17 emotional, but I think since neither Mr. Cawley
18 or I are am sure about that. I join in the
19 request.

20 THE COURT: Okay. You know, this
21 is actually sort of a tough call for me because
22 on the one hand, I didn't pick up the emotional
23 piece the way you did. What I did see is that
24 he said -- he came across to me as pretty

1 earnest, and I am concerned about the financial
2 part. But I was very impressed with just how
3 straightforward he was in his answers.

4 We're kind of early in the
5 process. I think we're going to be okay, so I'm
6 inclined to strike him just because of the
7 concerns that the two of you have expressed,
8 although I think he could serve, that's one I'll
9 keep a note by. I do think he could serve. If
10 we are pressed I may hold on to him in the pool.

11 All right. Next person on that
12 row had a yes to one or more of my questions.
13 Thank you. Please come forward, sir. Good
14 morning.

15 JUROR: Shark tank here.

16 THE COURT: It's a little scary,
17 isn't it? I need your name for the record.

18 JUROR: Jack Crystal.

19 THE COURT: Mr. Crystal, do you
20 remember your juror number?

21 JUROR: Ten.

22 THE COURT: You had a yes to one
23 or more of my questions, Mr. Crystal.

24 JUROR: Yes.

1 THE COURT: Tell me about that.

2 JUROR: I manage a physicians
3 office and it's difficult for me to be out more
4 than five days, five days or more. I do not
5 take week-long vacations. I do have Microsoft
6 as part of my portfolio.

7 THE COURT: When you say part of
8 your portfolio, what do you mean?

9 JUROR: Mutual fund. And I have a
10 good friend who owns an IT company called
11 Reliable Computer Services. That's about it.

12 THE COURT: As to the first thing,
13 your work schedule, are there other people who
14 can cover for you if you need to be out?

15 JUROR: No, sir. I'm the only one
16 that does my job, unfortunately.

17 THE COURT: What's the size of the
18 practice?

19 JUROR: Ten.

20 THE COURT: Ten what?

21 JUROR: Ten employees.

22 THE COURT: How many physicians?

23 JUROR: Three physicians.

24 THE COURT: Okay. You managed the

1 business.

2 JUROR: Yes.

3 THE COURT: And Microsoft is part
4 of your portfolio. Is this an investment on
5 your part or is this just part of a mutual fund
6 that invest?

7 JUROR: Mutual fund.

8 THE COURT: And it invest
9 generally in technology companies?

10 JUROR: Yes.

11 THE COURT: And you're aware of
12 that Microsoft is a part of that mix?

13 JUROR: Yes.

14 THE COURT: Okay. The last thing
15 that you had, I apologize, was?

16 JUROR: I have a good friend that
17 owns an IT company called Reliable Computer
18 Services. I have known him for over twelve
19 years.

20 THE COURT: All right. Okay.

21 Now, let's take those last two
22 things. Does the fact that the mutual fund you
23 invest in has an interest in Microsoft, is that
24 a financial interest of the sort that would

1 prevent you from being fair and impartial if you
2 were called upon to decide this?

3 JUROR: I don't think so, no.

4 THE COURT: The fact that you know
5 somebody who works in the IT field, would that
6 prevent you from looking at both sides's
7 evidence and arguments in this patent case
8 fairly and impartially?

9 JUROR: That's a tough question to
10 be honest. I mean, he does business on his own
11 and also does business with a couple companies.
12 I don't know for certain. I can't say yes or
13 no.

14 THE COURT: Okay. Now, the
15 question I'm trying to ask is not whether you
16 would -- not how you would end up deciding the
17 case, obviously nobody knows that, the argument
18 isn't it, it's your capacity to be open minded,
19 can you hear both sides and hear what they say,
20 and without worrying about what your friend
21 thought of you whether you decided for a
22 patentholder or against the patentholder, could
23 you just hear the evidence and give the parties
24 a fair shake, that's the bottom line?

1 JUROR: Yes.

2 THE COURT: All right. Thanks
3 very much.

4 Mr. Cawley.

5 MR. CAWLEY: I was a little bit
6 confused. I understand that you said that you
7 think you can hear the evidence and are fair,
8 but I also thought that you said that it was a
9 tough call about how your decision might be
10 influenced by the experience. Can you talk a
11 little more about that?

12 JUROR: Again, he's been in the
13 business, and I rely on him heavily for a lot of
14 things. And if I have a question about software
15 or whatever it may be, I defer to him and ask
16 him if he thinks it's worthwhile for me to
17 either invest in it or download it. So he's my
18 sort of go to guy for everything. And I don't
19 make a move on software nor download without
20 asking him first.

21 MR. CAWLEY: Okay. But if Judge
22 Jordan told you that you shouldn't talk to him
23 about it while this trial is --

24 JUROR: I won't do that.

1 MR. CAWLEY: Okay. But is there
2 some way -- I understand what you said, is there
3 some way in which your friendship with him or
4 your reliance on him you think might influence
5 your decision in this case?

6 JUROR: No, I don't think so.

7 MR. CAWLEY: Okay.

8 THE COURT: Thanks, Mr. Cawley.
9 Ms. Brooks.

10 MS. BROOKS: Do you know, does
11 your friend hold any patents?

12 JUROR: I do not know.

13 MS. BROOKS: You don't know
14 whether he's ever been involved in patent
15 litigation himself?

16 JUROR: I do not know.

17 MS. BROOKS: And lastly, has he
18 ever had any negative experience with Microsoft
19 products that he's passed on to you? You can
20 tell, it's okay.

21 JUROR: Haven't we all? No. No,
22 he's never said anything outright, no.

23 MS. BROOKS: In other words, what
24 I'm trying to get out when you say haven't we

1 all, is there anything in your own experience or
2 with your friend about his experience with
3 Microsoft products that might cause you to favor
4 Parallel Networks a little bit more over
5 Microsoft?

6 JUROR: I do not believe so, no.

7 MS. BROOKS: Thank you so much. I
8 appreciate it.

9 THE COURT: Mr. Cawley?

10 MR. CAWLEY: We have no motion,
11 Your Honor.

12 THE COURT: Ms. Brooks?

13 MS. BROOKS: No application.
14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Next person on that row who had a
17 yes to one or more of my questions.

18 Hi. Come right on in. Thanks.
19 Ma'am, I need your name for the record.

20 JUROR: Abigail Manuel.

21 THE COURT: Ms. Manuel, do you
22 remember your juror number?

23 JUROR: 23.

24 THE COURT: Ms. Manuel, you had a

1 yes to one or more of my questions. Can you
2 tell me about that, please?

3 JUROR: I work in the accounting
4 department at Discover Bank.

5 THE COURT: And so you have got
6 some accounting and economic experience?

7 JUROR: Yeah, I have been there
8 for -- I have been banking for over fifteen
9 years, but I have been in the accounting
10 department for about two.

11 THE COURT: We'll come back to
12 that in just a minute. Were there any other
13 questions that I asked that you had a yes to?

14 JUROR: The schedule was going to
15 be a little bit tight.

16 THE COURT: Nobody wants to give
17 up five days, but if you could, could you do it?

18 JUROR: Yeah, but that's more of
19 my concern, we work with the products, so that
20 would be my only issue.

21 THE COURT: And that issue, if it
22 came to it, there are people who could cover and
23 you could manage through that?

24 JUROR: I mean, yes.

1 THE COURT: I note the hesitation
2 in your voice. I think everybody -- it's a call
3 on every citizen's time to be here, so nobody is
4 eager to do it. I shouldn't say it, once in a
5 while there is somebody that's eager to do it,
6 but usually that's not the case. That's very
7 understandable.

8 But you wouldn't be in dire
9 straights nor would your employer if you were
10 picked and had to serve, am I hearing you
11 correctly?

12 JUROR: It wouldn't be their
13 preference, but obviously, they can't say no.

14 THE COURT: Okay. Now as to your
15 personal skill level and understanding, as part
16 of this case, it's a patent case. Parallel
17 Networks owns a patent. They say that Microsoft
18 infringes or trespasses on their rights
19 associated with that patent. Microsoft says no,
20 we don't. And besides that, your patent is
21 invalid. It's not a good patent. That's the
22 basis of the fight that's going on here.

23 In the course of them putting
24 forth evidence about those issues, they'll also

1 be putting forth evidence about what the damages
2 alleged are, that is if a jury that's impanelled
3 here were to decide that the patent is a good
4 patent, and that in fact Microsoft infringes it,
5 if those two things, which are not decided yet,
6 but if they were decided for Parallel Networks,
7 then the next question for the jury would be,
8 how much were they hurt and how would you figure
9 out the damages. How would you calculate and
10 figure that out. And both sides will have
11 experts that they bring in to talk about this
12 stuff.

13 In your own personal experience
14 and the things that you have learned working in
15 the banking field, you probably learned some
16 things about accounting, et cetera, would that
17 prevent you from being able to listen fairly and
18 impartially to the evidence both sides would put
19 on about damages? In short, could you be fair
20 and impartial?

21 JUROR: I think so.

22 THE COURT: Okay. Mr. Cawley, do
23 you have any questions?

24 MR. CAWLEY: No questions. Thank

1 you.

2 MS. BROOKS: I have one. You said
3 you work with the products?

4 JUROR: I work with Microsoft.
5 It's one of our systems, actually several of our
6 systems.

7 MS. BROOKS: Has there been
8 anything -- I know they're not perfect. Has
9 there been anything in your experience with
10 Microsoft products that would cause you to favor
11 Parallel Networks over Microsoft?

12 JUROR: No.

13 MS. BROOKS: Thank you.

14 JUROR: You're welcome.

15 THE COURT: Thank you very much,
16 Ms. Manuel. Please take your seat.

17 And I appreciate your follow-up
18 questions, Ms. Brooks. When she said product, I
19 thought she was talking about the bank's
20 products and services, not about Microsoft, so
21 I'm glad you brought that up.

22 Do you have any applications,
23 Mr. Cawley?

24 MR. CAWLEY: No.

1 THE COURT: Ms. Brooks?

2 MS. BROOKS: No.

3 THE COURT: Thanks. She stays in
4 the pool.

5 Next person on the row that had a
6 yes to one or more of my questions, please come
7 forward.

8 Good morning, sir. Can I get your
9 name for the record?

10 JUROR: Frank Thomas.

11 THE COURT: Mr. Thomas, do you
12 remember your juror number.

13 JUROR: 42.

14 THE COURT: Mr. Thomas, you had a
15 yes to one or more of my questions. Can you
16 tell me about that?

17 JUROR: Exsensor, I am a system
18 administrator. And we are kind of Microsoft
19 because they provide our education and training.
20 I have a two person staff. I am the technical
21 side and I have a manager, so those are the
22 reasons.

23 THE COURT: Was there a yes to any
24 other questions? We are going to come back and

1 talk about this. I want to make sure we got
2 everything on the table.

3 JUROR: That pretty much covers
4 it.

5 THE COURT: As to the first one, I
6 take it that those concerns are -- or the yeses
7 were yes, you have some affiliation with
8 Microsoft through Exsensor?

9 JUROR: Yes.

10 THE COURT: And second, work
11 related that you're a part of two-person team?

12 JUROR: Correct, Your Honor,
13 two-person team, manager and a technical side is
14 me, that's pretty much the office. And my
15 education comes through Microsoft.

16 THE COURT: Through Microsoft.
17 Okay. I'll ask the bottom line question first,
18 which is very important. You're receiving a
19 benefit through Exsensor which is funded or
20 given by Microsoft?

21 JUROR: Correct.

22 THE COURT: And you're working
23 regularly with I guess Microsoft products?

24 JUROR: Correct.

1 THE COURT: Could you in this
2 dispute about the patent rights, could you hear
3 both sides, including Parallel Network's
4 evidence which they're going to be bringing
5 against Microsoft, as well as Microsoft's
6 evidence which they're going to be bringing,
7 could you hear both sides and set aside your
8 work, including benefits, the education benefit
9 and be fair to both sides in the case, or would
10 the fact that you get those benefits prevent you
11 from hearing both sides?

12 JUROR: I know how to be non
13 biased.

14 THE COURT: So you could be
15 unbiased?

16 JUROR: Yes, I could be.

17 THE COURT: You could set that
18 aside and you could just decide the case to the
19 evidence that's here in the courtroom; right?

20 JUROR: I could. The only thing
21 would be work hours, my schedule, since there
22 are two individuals that run an office.

23 THE COURT: Okay. On that point,
24 it's not ideal for anybody to be away from work

1 for five days, we understand that. To the
2 extent you would be able, would the company be
3 able to cover for you for that period of time?

4 JUROR: I wouldn't be the person
5 to make that decision. My manager would have to
6 -- I know we have other sides that are two hours
7 away or more away, I don't know what their
8 workload is to be able do what I do. I couldn't
9 give a definite answer for that question.

10 THE COURT: If you were called to
11 serve and you told your manager look, I'm
12 obligated to be in court, would you be worried
13 about that? Would it prevent you from being
14 able to pay attention to the evidence or could
15 you?

16 JUROR: No, if I had approval from
17 management and they said there is time available
18 for me to serve, that would be their call.

19 THE COURT: Okay. Last but not
20 least, you say you work on the technical side.
21 What exactly do you do, sir.

22 JUROR: I'm in the middle of
23 migration from 2008 to 2012. I have open DNS, a
24 slew of other we have got like five or six

1 projects going on right now.

2 THE COURT: And that includes
3 working with Microsoft products?

4 JUROR: They are the core. We
5 first build a host and we build virtuals on top
6 of that, 99 percent is Microsoft.

7 THE COURT: Okay. Mr. Cawley, any
8 questions for Mr. Thomas?

9 MR. CAWLEY: Just a couple.

10 Mr. Thomas, now, you said that you
11 and your people have received training from
12 Microsoft?

13 JUROR: Yes.

14 MR. CAWLEY: Tell us a little more
15 about that.

16 JUROR: Pretty much we have a
17 person that handles are education. We have
18 yearly educational requirements. And through
19 our education provider we receive vouchers to
20 which training we need. And me personally, I'm
21 certified Microsoft 2008, now we're working on
22 our 2012 training, working on their virtual
23 training, anything that basically we have built,
24 we build different locations out and everything

1 we do, VM ware, the host, everything on top of
2 that is Microsoft related.

3 MR. CAWLEY: And then would
4 Microsoft provide personnel to help with that
5 training?

6 JUROR: No, we do online or in
7 class.

8 MR. CAWLEY: Does Microsoft make
9 any of that available?

10 JUROR: I only know about they
11 provide our vouchers for our training.

12 MR. CAWLEY: Let's suppose you
13 heard the evidence in this case, and the result
14 was the jury decided to give Parallel Networks a
15 lot of money from Microsoft, would that cause
16 you any embarrassment at work?

17 JUROR: No, I'm just there for the
18 training.

19 MR. CAWLEY: Thank you.

20 JUROR: You're welcome.

21 THE COURT: Hold on just a minute.
22 We got to give Ms. Brooks a chance.

23 JUROR: I apologize.

24 MS. BROOKS: Did you say you're

1 going from 2008 to 2012?

2 JUROR: Yes.

3 MS. BROOKS: So it would come as
4 no surprise to you that 2008 hasn't been the
5 most popular version?

6 JUROR: It's worked fine for us.

7 MS. BROOKS: What I want to make
8 sure is you haven't had the negative experience
9 with 2008 that you might favor Parallel Networks
10 over Microsoft as a result of your experience?

11 JUROR: I have done RFPs, decide
12 what they want to buy and we move forward
13 according to what their choices are.

14 MS. BROOKS: Thank you.

15 THE COURT: Thank you very much.
16 I appreciate it.

17 Mr. Cawley, any applications?

18 MR. CAWLEY: No, we don't have an
19 application.

20 MS. BROOKS: No application, Your
21 Honor.

22 THE COURT: Okay. He stays in the
23 pool.

24 Next person on that row who had a

1 yes to one or more of my questions. Come right
2 in. It's a little intimidating.

3 Can I have your name for the
4 record?

5 JUROR: Sherry Myers.

6 THE COURT: Ms. Myers, do you
7 remember your juror number?

8 JUROR: 30.

9 THE COURT: 30.

10 Ms. Myers, you had a yes to one or
11 more of the questions.

12 JUROR: Yes. One is daycare.

13 THE COURT: Daycare.

14 JUROR: Yes, I don't have anybody
15 for daycare.

16 THE COURT: Any other questions.

17 JUROR: My dad worked for a
18 business similar.

19 THE COURT: A business similar.

20 JUROR: To Microsoft.

21 THE COURT: What business is that?

22 JUROR: Excel.

23 THE COURT: Excel Business. We'll
24 go back and talk about this. Any other

1 questions you had a yes to?

2 JUROR: No.

3 THE COURT: First, and most
4 important, family, how many little ones do you
5 have?

6 JUROR: Three.

7 THE COURT: Three. They're all in
8 daycare.

9 JUROR: One is in daycare, the
10 other two are in school.

11 THE COURT: And do you work?

12 JUROR: I work during the day.

13 THE COURT: But your work schedule
14 is -- if you ever have to work late or something
15 like that, what kind of arrangements do you
16 make?

17 JUROR: I would have to find
18 somebody.

19 THE COURT: Have you -- is there
20 family members or neighbors that you have called
21 on in the past for help?

22 JUROR: Just family members, if
23 they were able to.

24 THE COURT: Do you have some

1 family members right in the area who somehow
2 help with that?

3 JUROR: Sometimes.

4 THE COURT: Who -- I know it seems
5 a little noisy, but I really am trying to get a
6 scope and understanding of what your support
7 network is, because this is -- to be called to
8 serve on a jury is simultaneously a burden and a
9 responsibility and an honor, and also people
10 would just as soon do away with the honor and
11 with the burden. But if you needed to do it,
12 who is in the area that could help you?

13 JUROR: My sister, but she doesn't
14 get off until 5:00.

15 THE COURT: Okay. Anybody else?

16 JUROR: She's the only one.

17 THE COURT: Okay. And as for your
18 dad's work, does the fact that your dad works in
19 a field that deals with technology.

20 JUROR: Computers.

21 THE COURT: Computers, would that
22 prevent you from being fair and listening to
23 both sides in a case that's about technology?
24 Could you hear the evidence in both sides and

1 treat the parties fairly?

2 JUROR: Uh-huh.

3 THE COURT: You're saying yes,
4 yes, you could be fair?

5 JUROR: Yes.

6 THE COURT: Great. Mr. Cawley,
7 any questions?

8 MR. CAWLEY: Just one. Ms. Myers,
9 I couldn't hear you completely. What did you
10 say about Excel?

11 JUROR: My dad works for Excel
12 Business.

13 MR. CAWLEY: That's the name of
14 his company?

15 JUROR: Uh-huh.

16 MR. CAWLEY: Okay. And could you
17 tell us just a little bit more about what they
18 do.

19 JUROR: They fix computers and
20 copiers.

21 MR. CAWLEY: Great. That's all
22 the questions I have. Thank you.

23 THE COURT: Ms. Brooks.

24 MS. BROOKS: One quick question.

1 Do you think the child care situation, that if
2 you were picked as a juror you might have
3 trouble really focusing on the evidence if you
4 were very concerned about your kid, do you think
5 that's a possibility?

6 JUROR: Yes.

7 MS. BROOKS: Thank you.

8 THE COURT: Thanks very much.
9 Applications?

10 MR. CAWLEY: No, Your Honor.

11 MS. BROOKS: Your Honor, having
12 been a mother myself, I would think she would
13 really feel, really have trouble focusing when
14 she's worried who is going to pick up her
15 children and the arrangements she would have to
16 make.

17 THE COURT: Well, I'm inclined to
18 agree. And I'm putting her in our maybe bucket
19 because she does have some family support here,
20 but I am concerned, unless she could verify
21 that, she would have trouble, so I think that's
22 a high likelihood we'll strike her for cause.
23 If it looks like we may be shorthanded, I'll
24 want to ask her a few questions and press her

1 and give her a chance to check with her sister
2 and see if she could get covered.

3 Anybody else on that second row
4 who had a yes to one or more of my questions?

5 Good morning, ma'am. Come right
6 in. Can I have your name for the record,
7 please?

8 JUROR: Alexis Kelly.

9 THE COURT: Ms. Kelly, you had a
10 yes to one or more of my questions.

11 JUROR: Multiple questions. I've
12 had Microsoft stock for years. I got various
13 Microsoft certifications, including CPlus. I
14 can rebuild and computer from scratch, hardware,
15 software, all internal parts. I have been doing
16 that technical stuff for years. I have
17 knowledge of this case, the lawsuit itself. It
18 has to do with dynamic web page refresher;
19 correct?

20 THE COURT: Yes.

21 JUROR: Yes.

22 THE COURT: Were there any other
23 questions you had a yes to?

24 JUROR: I don't think so.

1 THE COURT: Okay. Let's move
2 through those one at a time.

3 First, you have had Microsoft
4 stock for years. Without revealing numbers, the
5 important question is, does the fact that you
6 have an investment in Microsoft, is that
7 something that would prevent you from hearing
8 both sides in this case?

9 JUROR: Absolutely. I think
10 they're a reputable company.

11 THE COURT: So Parallel Networks
12 put on its evidence, you wouldn't be able to
13 hear what they had to say how that applies to
14 Microsoft?

15 JUROR: I don't believe so, no.
16 Also my affiliation with my company would
17 probably prevent me from.

18 THE COURT: Who are you affiliated
19 with?

20 JUROR: Verizon.

21 THE COURT: You work for Verizon?

22 JUROR: Yes.

23 THE COURT: What's the
24 affiliations?

1 JUROR: We work with Microsoft on
2 various different levels and different parties
3 and different systems and things throughout the
4 years, so that's a pretty good -- it's to my
5 best interest that they continue forward.

6 THE COURT: All right.

7 Mr. Cawley, any questions?

8 MR. CAWLEY: No.

9 MS. BROOKS: Thank you.

10 THE COURT: Thanks, Ms. Kelly.
11 Applications.

12 MR. CAWLEY: I think I do apply
13 that she be stricken for cause, Your Honor.

14 THE COURT: Okay.

15 MS. BROOKS: I would point out
16 while she was talking about it, she was pretty
17 negative to Parallel Networks and the patents
18 and stuff. Just for full disclosure for the
19 Court, there was a lot of invention and stuff
20 going around in her space.

21 THE COURT: Okay. We're striking
22 for cause.

23 Anybody else on that row who had a
24 yes to one or more of my questions?

1 Thank you sir. Come right in.

2 JUROR: Good morning.

3 THE COURT: Can I have your name
4 for the record?

5 JUROR: William Autman.

6 THE COURT: Mr. Autman, do you
7 remember your juror number?

8 JUROR: Two.

9 THE COURT: Number two.
10 Mr. Autman, you had a yes to one or more of the
11 things I asked?

12 JUROR: Yes.

13 THE COURT: Tell us about that,
14 please.

15 JUROR: As a sales rep my job is a
16 hundred percent commission. If I'm not at work
17 for a week or a week plus, I'm probably not
18 going to be able to pay my bills next month.

19 My wife has a fractured ankle and
20 its happens to be her driving foot so she can't
21 drive our son to and from school. I have also
22 done networking in my house and I have a deacon
23 class in college.

24 THE COURT: As for the first

1 point, which is a pretty big point, is there --
2 is the finance or the commission phase that you
3 work --

4 JUROR: If I don't go out and
5 bring in business this week, it's all based on I
6 get paid money next month. If I'm out for a
7 week, week-and-a-half, I can't bring in any
8 business.

9 THE COURT: What sales?

10 JUROR: I'm a wholesales mortgage
11 representative. I work for Equos Lending out in
12 California. I work with mortgage brokers and
13 get them to bring their loans into my company.
14 And I get a percentage of the volume I bring in.

15 THE COURT: Is that something that
16 they have defined hours on?

17 JUROR: There is really -- I get
18 phone calls and E-mails all day every day, so
19 there is really no set hours, but I mean, give
20 or take, I work 8:30 to 5:00, 8:30 to 6:00.

21 THE COURT: Do you work across
22 time zones?

23 JUROR: For the most part I work
24 primarily in the east. I do work, my company is

1 based out in California, so it does vary
2 depending on who needs what or what time?

3 THE COURT: Okay. Now, with
4 respect to the home situation, any --

5 JUROR: A disaster, my life sucks
6 right now.

7 THE COURT: Is there any family
8 support outside your home?

9 JUROR: My mother-in-law helps
10 out, but you pull one of us out of the rotation
11 and things are going to crumble quick.

12 THE COURT: Okay. But she does
13 help out?

14 JUROR: She does, yeah.

15 THE COURT: Okay. And the
16 networking that you have done in your own home,
17 you have developed some knowledge about how to
18 manage that?

19 JUROR: Setting up wireless,
20 pretty basic, straightforward stuff.

21 THE COURT: Would it prevent you
22 -- if you ended up on the jury, would that
23 information prevent you from being fair and
24 impartial to both sides?

1 JUROR: No, not at all.

2 THE COURT: And it's certainly not
3 ideal, so you have to put it life is less than
4 we would like it to be, if you were selected to
5 serve the jury, could you be fair to both sides?

6 JUROR: Absolutely.

7 THE COURT: Okay. That's really
8 the key question.

9 Mr. Cawley, do you have any
10 questions.

11 MR. CAWLEY: Just a couple. So
12 when did your wife injure her ankle?

13 JUROR: It was about a month ago.
14 It was a compound fracture in the tibia and the
15 fibula.

16 MR. CAWLEY: Wow.

17 JUROR: Yeah, she did it right.

18 MR. CAWLEY: If you were selected
19 to serve on the jury given what you have told us
20 about your wife, your kids, your mother-in-law,
21 do you think that those things would be a
22 distraction to your being able to focus on the
23 evidence?

24 JUROR: A hundred percent. And I

1 only say that because I'm so stressed out right
2 now it's not even funny. All I think about is
3 getting my kid there, my wife over there. I
4 have been here for three months, and I'm like
5 great, I got to take a week off already, so
6 yeah, I got a lot going.

7 MR. CAWLEY: Thank you.

8 MS. BROOKS: My question is if
9 this were perhaps a year from now and you had
10 been here longer and your wife had healed, do
11 you think you would be in a much better state?

12 JUROR: Absolutely, but I would
13 still be concerned about my commission based
14 job.

15 MS. BROOKS: Sure. I just
16 wondered, if this is sort of as bad as it gets
17 and hopefully it will get better.

18 JUROR: Yeah, as long as its gets
19 better, I hope a year from now I will feel
20 better.

21 MS. BROOKS: Thank you.

22 THE COURT: Thanks very much. I
23 appreciate it.

24 JUROR: Thank you.

1 THE COURT: Applications?

2 MR. CAWLEY: Move to strike for
3 cause, Your Honor. He said very emphatically he
4 didn't think he could focus on the evidence.

5 MS. BROOKS: I agree with him.

6 THE COURT: Okay. Strike him.

7 Next row back, and thank you very
8 much for your patience. We're making
9 progress, ladies and gentlemen.

10 The next row back, first person
11 that had a yes to one or more of my questions,
12 please come forward.

13 Hi. Can you give me your name for
14 the record?

15 JUROR: Kami Beers.

16 THE COURT: Ms. Beers, do you
17 remember your juror number?

18 JUROR: Six.

19 THE COURT: You had a yes to one
20 of my questions. Please tell us about that.

21 JUROR: I believe one of your
22 questions was have you served as a juror on a
23 civil trial before, and that is yes, it was a
24 personal injury between a tenant and a landlord

1 and that was in January.

2 THE COURT: In state court?

3 JUROR: Yes.

4 THE COURT: Just a few months ago.

5 Down in Kent County?

6 JUROR: Yes.

7 THE COURT: How long a trial was
8 that?

9 JUROR: It was a five-day trial.

10 THE COURT: Now, we'll come back
11 to that. Any other why questions that you had?

12 JUROR: No, that was the only one.

13 THE COURT: Now, does the fact
14 that you already gave five days of your life to
15 serve on a jury in the state system, would that
16 prevent you from being fair and impartial if you
17 were asked to serve on this jury?

18 JUROR: No.

19 THE COURT: And how did the trial
20 come out? Who did the jury find for in the
21 landlord/tenant personal injury suit?

22 JUROR: Found for the landlord,
23 for the defendant.

24 THE COURT: For the defendant.

1 Okay. In this case, as I already indicated,
2 it's about patents. You have served on a jury
3 where you found for a defendant. Would that --
4 would you have a bias toward the defendant in
5 this case just because you found for the
6 defendant in this last case?

7 JUROR: Not at all.

8 THE COURT: So you could hear both
9 sides with an open mind and make a judgment on
10 that and judge this case based solely on the
11 case?

12 JUROR: Yes.

13 THE COURT: Mr. Cawley?

14 MR. CAWLEY: No.

15 MS. BROOKS: I have one. His
16 Honor asked do you think if it comes time for a
17 verdict and the jury is strongly leaning toward
18 the defense that you might think that I can't
19 come back with two defense verdicts in a row and
20 lean more toward the plaintiff?

21 JUROR: No, absolutely not.

22 THE COURT: Thank you so much. I
23 appreciate it.

24 Applications?

1 MR. CAWLEY: None from the
2 plaintiff, Your Honor.

3 MS. BROOKS: No, Your Honor.

4 THE COURT: Thanks.

5 The next person on that row had a
6 yes to one or more of my questions, please come
7 forward.

8 Good morning, ma'am.

9 JUROR: Good morning.

10 THE COURT: Can you please give us
11 your name for the record?

12 JUROR: It's Deborah Free.

13 THE COURT: Ms. Free, do you
14 remember your juror number?

15 JUROR: Thirteen.

16 THE COURT: You had a yes to one
17 or more of the questions I asked. Can you tell
18 us about that, please?

19 JUROR: A few.

20 THE COURT: Just run through all
21 of them and then we'll run --

22 JUROR: I think you asked if we
23 open to the idea of stock, I'm not sure, I have
24 a person that handles that. Patents, the

1 company that I worked for, he has at least five
2 or six. I work with a software engineering
3 occasionally, so I know he writes code. And I
4 think you asked a civil lawsuit, I was in one
5 once.

6 THE COURT: And that covers all
7 the yeses?

8 JUROR: I think so.

9 THE COURT: Let's take those one
10 at a time. So you have some investments, but
11 you don't know whether they involve Microsoft or
12 Parallel Networks?

13 JUROR: No idea, I just get a
14 statement. I don't read it.

15 THE COURT: Like so many of us.
16 So your finances, you wouldn't be bias for or
17 against anybody in this case?

18 JUROR: None at all, no.

19 THE COURT: Now, you know somebody
20 who does some work with software?

21 JUROR: Yes.

22 THE COURT: That wouldn't --
23 again, the real question, all the questions
24 we're asking is to try to find out could you be

1 fair to both sides and hear the evidence in this
2 case with an open mind without being predisposed
3 for or against either side?

4 JUROR: Yes.

5 THE COURT: So regardless of
6 knowing somebody who has some software
7 experience, you could do that?

8 JUROR: Yes.

9 THE COURT: What's the company you
10 work for?

11 JUROR: I work for a company that
12 does mail equipment so he has patents on
13 different things, on a machine.

14 THE COURT: Now, again, this case
15 involves one side, Parallel Networks saying hey,
16 we own a patent, Microsoft saying we don't
17 infringe it, we're not trespassing on your
18 rights and we don't think we have, that's a
19 bottom line dispute between the parties.

20 Does the fact that either the
21 company you work for or the owner has patents,
22 would that prevent you from hearing again, with
23 an open mind, what both sides have to say about
24 the patent, about the defenses regarding the

1 patent, could you be fair and impartial despite
2 your boss holding patents?

3 JUROR: Absolutely, we should all
4 be fair.

5 THE COURT: Okay. Very good. And
6 I forget.

7 JUROR: Civil, I was in civil
8 cases.

9 THE COURT: Civil, right. How
10 long ago was that?

11 JUROR: At least six, seven years
12 ago.

13 THE COURT: Can you describe for
14 me?

15 JUROR: Yeah, someone came to
16 paint our house and he did not complete the
17 work. He sued us because we didn't pay them.
18 And we came out winners because he did not
19 complete it.

20 THE COURT: Okay. Was that a suit
21 here in Delaware?

22 JUROR: It was here in one of
23 these courts and the judge favored -- gave a
24 decision in our favor.

1 THE COURT: Having had that
2 experience yourself of being a defendant, would
3 that bias you in favor of the defense here?

4 JUROR: No, no, either way.

5 THE COURT: You could hear both
6 sides?

7 JUROR: Absolutely. That's the
8 government at work.

9 THE COURT: There you go. I'm
10 going to ask Mr. Cawley, does he have any
11 questions?

12 MR. CAWLEY: Just a couple.

13 What do you do at work?

14 JUROR: I am customer service. I
15 go out in the field and deal with customers and
16 make them happy.

17 MR. CAWLEY: Great.

18 THE COURT: Ms. Brooks.

19 MS. BROOKS: Has your employer
20 ever been in a patent litigation?

21 JUROR: Yes.

22 MS. BROOKS: Can you tell me about
23 that.

24 JUROR: I don't know a lot, other

1 than he went to court, and he -- I think he's
2 been in more than one. I'm not really sure. I
3 think he might have lost, because he's been more
4 than once. And that was at least three or four
5 years ago.

6 MS. BROOKS: Is there anything in
7 that experience he may have mentioned to you one
8 way or another that may cause you potentially to
9 favor one side or the other?

10 JUROR: No.

11 MS. BROOKS: Thank you.

12 THE COURT: Thanks. I appreciate
13 it.

14 MR. POFF: Your Honor, my firm
15 does patent representation, and we have been her
16 boss's lawyer. I don't think she knows that,
17 but I don't want the lightbulb to go off at some
18 point.

19 THE COURT: Maybe we should bring
20 her up and ask her about that. Okay.

21 Ms. Free, I apologize. I should
22 have asked the question and I didn't. Could you
23 just come back for one more quick question. My
24 apologies, ma'am.

1 Sorry to make you get that extra
2 exercise coming back.

3 JUROR: I could use it today.

4 THE COURT: What's the name of
5 your employer's business?

6 JUROR: Tritech.

7 THE COURT: Tritech. If it were
8 the case that either of these parties had any --
9 had represented Tritech in any fashion
10 previously --

11 JUROR: I know he has lawyers, and
12 I'm pretty sure it's neither of these, because I
13 know who they are.

14 THE COURT: But if it were, would
15 that affect your ability to be fair and
16 impartial?

17 JUROR: No.

18 THE COURT: Okay. All I need to
19 know. Thanks so much. All right.

20 Applications.

21 MR. CAWLEY: No, Your Honor.

22 MS. BROOKS: No, Your Honor.

23 THE COURT: Thanks. She stays in
24 the pool. We're about halfway through the panel

1 now, so what I'm going to start doing, I don't
2 think anybody will pay any attention to this at
3 all, but I'm going to start Ms. Brooks first now
4 if she's got applications in case anybody is
5 looking and paying attention and saw me looking
6 at you first. I'm letting you guys both know
7 why I'm changing the pattern.

8 Okay. Anybody on that same row,
9 next one who had a yes to one or more of my
10 questions, I'll ask you to please come forward.

11 Good morning, sir. Please come
12 right in. Can I get your name for the record?

13 JUROR: Steve Straneva.

14 THE COURT: Mr. Straneva, do you
15 remember your juror number?

16 JUROR: 38.

17 THE COURT: Now you had a yes to
18 one or more of my questions, Mr. Straneva. Can
19 you please tell me about that?

20 JUROR: A number. I'll do as many
21 as I can remember.

22 First I'm a retired accountant and
23 active investor and I have been in and out of
24 Microsoft stock on numerous occasions.

1 THE COURT: Are you in it now?

2 JUROR: I'm out right now.

3 My wife was a director of
4 technology for a public school system and
5 received an online masters degree. I think that
6 was one of the questions.

7 I have a nephew that currently is
8 a network specialist for the Department of
9 Defense as a civilian, civilian employee. I'm
10 trying to think of the other ones. Early in my
11 career I was involved in the startup software
12 company for community mental health center
13 systems.

14 THE COURT: So you had some --
15 when you say start up, you were involved on the
16 technology side?

17 JUROR: Actually I was the CFO of
18 a mental health center that helped develop and
19 test CAT software. And I can't remember any of
20 the other ones right now.

21 Well, the other ones dealt
22 primarily with the parties, I don't know any of
23 the people here.

24 THE COURT: Okay. Well, let's go

1 through those. Here is what's going to be the
2 bottom line question, so I'm going to be asking
3 this in various different ways. Does anything
4 that you have told me cause you to think that
5 you can be less than fair, that you would have a
6 problem being impartial and listening to both
7 side's evidence and arguments in this case where
8 they're trying to get impartial people to help
9 us sort out their dispute?

10 JUROR: Honestly I don't know how
11 to answer that because, you know, I have had
12 quite extensive deals with Microsoft, and
13 they've not all been good. So I can't honestly
14 say that I can do that.

15 THE COURT: What was your
16 experience with Microsoft that was less than
17 happy?

18 JUROR: A lot of it, currently
19 Microsoft 10, to me it's a disaster. And my
20 wife is hard core Apple, and so, I listen to
21 that at home all the time.

22 So I don't know how to answer
23 that.

24 THE COURT: Well, the only way to

1 answer it is to test your own intuition about
2 your capacity, and set aside things -- so, for
3 example, whether you like Microsoft 10 or not
4 has nothing to do with whether Microsoft
5 infringes the patent that Parallel Networks says
6 they infringe; right?

7 So the question would be, in
8 hearing that, could you say, well, I don't like
9 Microsoft 10, but that doesn't have anything to
10 do with this, I'm going to pay attention to this
11 evidence. That's really the gut check question
12 that I need to hear the answer to, and I'm not
13 asking you to be less than honest about it. If
14 your answer to that is no, I couldn't be fair,
15 we need to hear that. If your answer is, yeah,
16 I have had a less than happy experience with
17 Microsoft, but I could still be fair, I need to
18 hear that.

19 JUROR: I think I can be fair. I
20 mean, I guess that's the best I can say.

21 THE COURT: That's pretty much all
22 that we can ask of anybody is that they do their
23 best to be fair and not let things outside the
24 courtroom invade their decision making in the

1 courtroom.

2 Let's go through these that you
3 said yes to a little more carefully. In
4 developing the software that you developed, did
5 you have any experience with that that in a case
6 involving software would bias you for or against
7 someone who claims inventorship rights in
8 software?

9 JUROR: I can't think it would
10 bias you.

11 THE COURT: And because of your
12 wife's job or your nephew's job, you may hear
13 views about software, same question, could you
14 set that aside and say I'm paying attention to
15 this and I'm going to be fair?

16 JUROR: I think I could, because
17 there -- one is on one side, one is on the other
18 side, so I'm in the middle.

19 THE COURT: So balancing out the
20 family dynamic. So you wouldn't be worried
21 about if I go home and tell my wife I found for
22 Microsoft, her being a hardcore Apple person,
23 I'm going to smell the proverbial underworld for
24 a while on that, you wouldn't be concerned about

1 that?

2 JUROR: No, I don't think so.

3 THE COURT: Okay. And you have
4 mentioned your investments, you're not in
5 Microsoft now, so I presume that wouldn't be an
6 issue for you in deciding this case, would it?

7 JUROR: I don't think so.

8 THE COURT: Ms. Brooks.

9 MS. BROOKS: Thank you. So you
10 mentioned you have been in and out of Microsoft
11 stock, right now you're out. Is there any
12 particular reason that you decided to be out of
13 Microsoft stock.

14 JUROR: Because it has risen so
15 much, I had a nice profit in it, so I took the
16 profit.

17 MS. BROOKS: And you mentioned you
18 have some fairly hard feelings towards Windows
19 10.

20 JUROR: Yes.

21 MS. BROOKS: If at the end of this
22 case, it's a close call between whether Parallel
23 Networks is right or Microsoft is right, do you
24 think those hard feelings might cause you to

1 favor Parallel Networks a little more than
2 Microsoft?

3 JUROR: I would like to say that
4 it wouldn't, but I don't know.

5 MS. BROOKS: Did you say you don't
6 know?

7 JUROR: I don't know. I would
8 like to think that I'm a better person than
9 that. Okay?

10 MS. BROOKS: Thank you, sir. I
11 appreciate that. Thank you.

12 THE COURT: Mr. Cawley?

13 MR. CAWLEY: Tell us a little bit
14 about your practice when you were still
15 practicing accounting.

16 JUROR: Well, I've worked -- first
17 I started out in public accounting, I worked for
18 CPA firms, then I went into nonprofits and spent
19 the majority of my career in nonprofits. And
20 then I went to public education and was in
21 public education. In all of them, I was an
22 accountant or CFO.

23 MR. CAWLEY: Have you had any
24 experience in determining the amount of a

1 reasonable royalty for a patent?

2 JUROR: No.

3 MR. CAWLEY: Are you a programmer?

4 JUROR: No.

5 MR. CAWLEY: So the software
6 development that you have done, describing to
7 us, you were more of a financial business side
8 than a technical side?

9 JUROR: Yeah.

10 MR. CAWLEY: That's all the
11 questions I have, Your Honor.

12 THE COURT: Thank you very much,
13 sir. I appreciate it.

14 Any applications?

15 MS. BROOKS: Yes, Your Honor, I
16 would challenge for cause. He's very candid, he
17 said he would like to be a better person than
18 that, but he really didn't know. And we can't
19 wait for the end of the trial to make that
20 determination.

21 THE COURT: Mr. Cawley?

22 MR. CAWLEY: We oppose that. I
23 don't think we heard anything that rises to the
24 level of cause.

1 THE COURT: He was -- I'm going to
2 deny that application. I think his expressions
3 were some people are more careful about
4 assessing themselves. I'm not prepared -- I'm
5 prepared to give him the benefit of the doubt
6 that he is saying I think I'm better than that,
7 I would like to think I'm better than that. On
8 a few occasions in that discussion I had with
9 him, he indicated that he thought he could set
10 aside the bad experiences that he's had with
11 Windows 10, so I'm keeping him in the pool.

12 Next person on that row, if any,
13 who had a yes to one or more of my questions.

14 Hi. Ma'am, can I have your name
15 for the record?

16 JUROR: Dawn Hester.

17 THE COURT: Ms. Hester, do you
18 remember your juror number?

19 JUROR: Eighteen.

20 THE COURT: You had a yes to one
21 or more of the questions I asked. Can you tell
22 us about that?

23 JUROR: I worked with a company
24 that had patent, I used to work for DuPont. I

1 didn't deal with patents.

2 THE COURT: You didn't deal with
3 patents?

4 JUROR: Yes.

5 THE COURT: You answered yes to my
6 other questions.

7 JUROR: There was questions about
8 the household website. My husband works in IT.
9 There also was a question about training.

10 THE COURT: Training.

11 JUROR: So he has done multiple
12 trainings and certifications in the IT space.

13 THE COURT: Any other yeses?
14 We'll cover these, I just want to get it all on
15 the table first.

16 JUROR: Just child care restrains,
17 I need to be out of here by 4:30 daily.

18 THE COURT: When do you typically
19 pick your child up by child care?

20 JUROR: I have to get her by 5:30.
21 She's in Middletown.

22 THE COURT: We will be out of here
23 by 4:30 for sure. There aren't many things in
24 my life I can control, but I can control that.

1 As to your husband's IT training
2 and experience, would that prevent you from
3 being fair and impartial in the case that
4 involves software?

5 JUROR: No.

6 THE COURT: Okay. Do you ever
7 talk about his -- the technical aspects of his
8 job with him?

9 JUROR: Maybe at a high level.

10 THE COURT: So he's not chatting
11 with you about the coding when you're sitting
12 around the dinner table?

13 JUROR: No. No.

14 THE COURT: In your experience
15 with DuPont, you have a very large company that
16 has a big patent portfolio, would that bias --
17 would the fact that you work for a company that
18 had a lot of patents, would that bias you in
19 favor or against the patentholder?

20 JUROR: No.

21 THE COURT: So you could hear both
22 sides' arguments you think?

23 JUROR: Yes.

24 THE COURT: Ms. Brooks.

1 MS. BROOKS: Your husband works in
2 IT, you said you might talk at a high level.
3 Has he ever complained about any performance
4 issues with Microsoft products?

5 JUROR: No. I'm a Microsoft user
6 myself.

7 MS. BROOKS: Thank you very much.

8 THE COURT: Mr. Cawley.

9 MR. CAWLEY: Where does your
10 husband work?

11 JUROR: JP Morgan Chase. I work
12 there as well.

13 MR. CAWLEY: And he's -- he's
14 actually in IT at JP Morgan Chase.

15 JUROR: Yes.

16 MR. CAWLEY: You're a program
17 manager. Tell us what you do.

18 JUROR: I work on the credit side,
19 so I work with merchants.

20 MR. CAWLEY: Thank you.

21 THE COURT: Thanks, Ms. Hester. I
22 appreciate it.

23 Ms. Brooks.

24 MS. BROOKS: No application.

1 THE COURT: Mr. Cawley.

2 MR. CAWLEY: No application.

3 THE COURT: She stays in the pool.

4 The next individual on that row
5 who had a yes to one or more of my questions,
6 please come forward.

7 Thank you, sir. Can I have your
8 name for the record?

9 JUROR: Zachary Swan.

10 THE COURT: Swan. Mr. Swan.

11 JUROR: Yes.

12 THE COURT: Mr. Swan, do you
13 remember your juror number?

14 JUROR: 39.

15 THE COURT: Now, you had a yes to
16 one or more of the questions I asked. Can you
17 tell us about that?

18 JUROR: Yes. The first one was
19 the child care. I have to watch my daughter. I
20 watch her every day. I don't have anybody to
21 fill in that spot for me.

22 The other thing is I had
23 Microsoft, or the PowerPoint and all that
24 training in college, so I didn't know if that --

1 THE COURT: That's important.
2 That's one of the things we want to know.
3 Anything else?

4 JUROR: That's it.

5 THE COURT: Take the last one
6 first. The fact that you learned some things
7 about Microsoft products, how to operate the
8 PowerPoint software, would that prevent you from
9 being fair in the case for Microsoft?

10 JUROR: No.

11 THE COURT: As to the child care
12 issues, do you have any family support or other
13 network support who covers for you if for some
14 reason you're unable to pick your child up from
15 daycare?

16 JUROR: She doesn't go to daycare.

17 THE COURT: You stay home?

18 JUROR: Yeah, because I work -- my
19 and my wife's schedules are different. I work
20 night shift and watch the baby during the day
21 and she works day shift.

22 THE COURT: I understand. Do you
23 have any family members or other people who
24 cover for you if for some reason you're not able

1 to watch your child during the daytime?

2 JUROR: Every once in a while we
3 get my sister-in-law, but she has a two-year-old
4 as well, and she works from home, so trying to
5 watch her two-year-old and work as well.

6 THE COURT: Difficult.

7 JUROR: Yeah.

8 THE COURT: Any other family
9 members or people who have pitched in in the
10 past?

11 JUROR: No, that's it.

12 THE COURT: Okay. Ms. Brooks.

13 MS. BROOKS: Mr. Swan, what's your
14 job at night? What is the schedule.

15 JUROR: 11:00 p.m. to 7:00 a.m.

16 MS. BROOKS: I don't mean to pry,
17 but during the day when your child naps, do you
18 take an opportunity to nap?

19 JUROR: Yes, I try to nap at the
20 same time she does.

21 MS. BROOKS: So if you're in
22 trial, unfortunately you won't be able to nap,
23 are you going to be -- when are you going to
24 sleep?

1 JUROR: I'll try to see if they
2 give me time off.

3 MS. BROOKS: Thank you, Mr. Swan.

4 JUROR: You're welcome.

5 MR. CAWLEY: Thank you, Mr. Swan.
6 I don't have any questions.

7 THE COURT: Thank you, sir.

8 MS. BROOKS: I feel for him, but I
9 don't know if it's for cause. That's a harsh
10 schedule.

11 THE COURT: Yes, it is.

12 Mr. Cawley.

13 MR. CAWLEY: You know, I think it
14 may rise to the level of cause, Judge, so I
15 guess I'm making an application for it. It's
16 child care issue, but there is just a disruption
17 of bio issue that he's going to go from the
18 nighttime world to the daytime world.

19 THE COURT: Yeah. And not to cast
20 aspersions, but not all patent cases are things
21 that wake you up, so it may be a challenge from
22 that perspective. But I'm going to put him in
23 the same bucket with some of the others with
24 child care issues because I don't think the

1 issues are much -- I mean, he's got the added
2 problem of the schedule and that is an
3 additional problem, but he'll be one of those
4 ones, we'll put him in the question mark
5 category. Okay.

6 Next person on that row, if anyone
7 who had a yes to one more of my questions.

8 Moving to the next row back from
9 the aisle, moving toward the wall, first person
10 who had a yes to one or more of my questions,
11 please come forward.

12 Good morning, sir. Please come
13 right in, and give me your name for the record.

14 JUROR: Mike Long.

15 THE COURT: Mr. Long, do you
16 remember your juror number?

17 JUROR: 22.

18 THE COURT: You had a yes to one
19 or more of the things I asked. Can you tell us
20 about that, please.

21 JUROR: The biggest conflict is I
22 have work schedule conflict. I do work for
23 Comcast Corporation, so I do engineering, so I'm
24 a little bit network, not much, most of it is

1 video. Most of this my shift consist of working
2 from midnight to 8:00 in the morning, to do that
3 and to come in and do this would be difficult.
4 That's really the most conflict I have, that and
5 I have this bad toothache I need to get to the
6 dentist with.

7 THE COURT: When did that develop?

8 JUROR: I have had this tooth
9 thing, I had one extracted Tuesday, I think
10 there is an infection there. The one up at the
11 top is giving me a problem. I have to get to
12 the dentist like today, hopefully, that's a big
13 list.

14 THE COURT: If it came to it and
15 you needed to talk to Comcast, you say your
16 current shift is a midnight to 8:00 shift?

17 JUROR: It is, but this week and
18 all month, 8:00 a.m. to midnight we have
19 scheduled maintenance, we have to perform the
20 modification to the plant system because we got
21 the launch of the three dot system, we have all
22 this work, it's scheduled for the whole month,
23 all week, 12:00 to 6:00.

24 THE COURT: 12:00 to 6:00?

1 JUROR: That's the window, yeah,
2 we can shut everybody off and do our thing.
3 Sorry.

4 THE COURT: Does your knowledge
5 about the technical side of things, would that
6 prevent you from being fair in a case involving
7 technology if you were selected to sit?

8 JUROR: I don't think so.

9 THE COURT: Thanks.

10 Ms. Brooks.

11 MS. BROOKS: Yes. Mr. Long, I
12 know when I have got a toothache, that's all I
13 can think about.

14 JUROR: That's all you think
15 about, yes.

16 MS. BROOKS: So if you got picked
17 for this jury and you weren't able to get this
18 taken care of, do you think you would be very
19 distracted?

20 JUROR: Yes, I have to get it
21 fixed either today or tomorrow, yes.

22 MS. BROOKS: Thank you so much.

23 JUROR: On top of trying to work
24 that shift.

1 THE COURT: Mr. Cawley.

2 MR. CAWLEY: Thank you, Mr. Long.

3 THE COURT: Thanks very much,
4 Mr. Long.

5 JUROR: Thank you.

6 THE COURT: Ms. Brooks.

7 MS. BROOKS: Yes, I apply for
8 cause, Your Honor.

9 MR. CAWLEY: I don't know that it
10 rises to cause, although I would be inclined to
11 put him on the list that he already established
12 with several people on it.

13 THE COURT: You're a tough man,
14 Mr. Cawley. I have had a toothache before, and
15 I just -- we just got to accept people as being
16 honest with us. If he's concerned about an
17 infection in his mouth, that's a serious issue
18 that he really does have to attend to, so I hate
19 to let him go. If it weren't for that, even
20 though he has got a schedule, I would keep him
21 in the mix. I am worried about the medical side
22 of that. So I'll excuse him.

23 The next person on that row that
24 had a yes to one or more of my questions, please

1 come forward.

2 Please come right up.

3 JUROR: My biggest --

4 THE COURT: Before you start, I
5 have got to get your name. Could you tell us
6 your name for the record.

7 JUROR: Hope Kramedas.

8 THE COURT: Ms. Kramedas, do you
9 remember your juror number?

10 JUROR: 21.

11 THE COURT: You had a yes.

12 JUROR: So I'm a business owner,
13 so I have got a full-time business, I have a
14 gymnastics studio. I have kids to pick up and
15 classes to do during the week. To be here all
16 week would probably be my biggest thing.

17 THE COURT: The scheduling.

18 JUROR: Yeah.

19 THE COURT: Any other things you
20 had yes to?

21 JUROR: No.

22 THE COURT: Let's talk about that,
23 then. So what's the name of your studio?

24 JUROR: Galaxy Gymnastics of

1 Delaware.

2 THE COURT: Just guessing. How
3 many folks work in your gym?

4 JUROR: I have about five
5 part-time people, and I'm the only full-time
6 person.

7 THE COURT: Now, when -- you said
8 I have people I need to pick up. Explain that.

9 JUROR: I have kids at school.

10 THE COURT: Your own children?

11 JUROR: Yeah, besides my kid, I
12 pick up other kids, too, that come to the gym.

13 THE COURT: That come to the gym.

14 JUROR: Yeah.

15 THE COURT: How many days a week
16 are you picking kids up from school?

17 JUROR: Every day.

18 THE COURT: How many kids are you
19 picking up?

20 JUROR: Five to six.

21 THE COURT: And in the past when
22 you have had to make arrangements, I'm assuming
23 vacations and whatnot.

24 JUROR: I usually do things on the

1 days that I don't -- Monday is actually a good
2 day for me where I don't have to pick kids up.
3 If I schedule anything, it's always on a Monday.

4 THE COURT: Do you have family
5 members, spouse, sibling, mother, mother-in-law,
6 father, father-in-law, aunt, sister, anybody who
7 covers for you when you need coverage?

8 JUROR: Not with picking the kids
9 up. My -- my dad is seventy-five years old, his
10 car is not big enough to take -- he doesn't
11 drive my car, he drives a little car.

12 THE COURT: When you or your
13 family takes a vacation, do you just shut the
14 gym down?

15 JUROR: I do. That's the only way
16 I do anything is when it's shut down.

17 THE COURT: The five part-time
18 workers, they cover for you on occasion?

19 JUROR: They all have jobs during
20 the day. They usually come in at night. I have
21 day classes, 10:00, 1:00 and 2:00 that I do by
22 myself, and my employees don't come in at 4:00,
23 they usually come in after their jobs. I'm the
24 only daytime employee.

1 THE COURT: Okay. Now, are there
2 other sources of income for your family besides
3 Galaxy Gymnastics?

4 JUROR: No. I mean, my husband
5 has a part-time, he is a DJ.

6 THE COURT: All right.
7 Ms. Brooks.

8 MS. BROOKS: Ms. Kramedas, do you
9 think that if you did get picked for the jury,
10 you would be so concerned with everything that
11 you weren't doing?

12 JUROR: Most likely.

13 MS. BROOKS: And you would have
14 trouble focusing on the evidence?

15 JUROR: You know, it's always in
16 the back of my mind. It's in the back of my
17 mind right now with my kids. And I have to go,
18 who is going to pick her up at this point. It's
19 a huge concern.

20 THE COURT: It's always a concern
21 when we're off schedule.

22 Anything else?

23 MS. BROOKS: No. Thank you very
24 much.

1 MR. CAWLEY: Thanks, Ms. Kramedas.
2 I have just one follow-up. Who would be picking
3 up your child now? Is your husband hours, is he
4 available to pick them up? Let's take that
5 hypothetical, is it a son or daughter or both?

6 JUROR: Daughter.

7 MR. CAWLEY: If your daughter were
8 ill, would your husband be able to pick her up?

9 JUROR: He would probably have to,
10 but that's not a good circumstance, especially
11 if I'm not working, that he is working and
12 losing money.

13 THE COURT: Okay. Here is the
14 bottom line of a key and important question.
15 Nobody wants to be picked for a jury in my
16 experience, but if you were picked for this
17 jury, could you be fair to these parties and not
18 hold it against them that you were here and not
19 at Galaxy Gymnastics?

20 JUROR: I would have to. That's
21 my duty.

22 THE COURT: Could you do that
23 duty?

24 JUROR: For five days?

1 THE COURT: See, you have hit it
2 exactly correct, that's exactly correct, that's
3 the bottom line question, for five days. If you
4 had to sit here, could you say, I just got to
5 listen to these parties and help them sort this
6 out.

7 JUROR: I would have if I got
8 picked.

9 THE COURT: You wouldn't want to,
10 but could you do it?

11 JUROR: I could.

12 THE COURT: Okay. Thanks very
13 much, Ms. Kramedas. I appreciate your time.
14 Applications.

15 MS. BROOKS: Could we put her on
16 maybe?

17 MR. CAWLEY: That's what I would
18 do, Judge.

19 THE COURT: Let's put her on the
20 maybes.

21 Next person on that row that had a
22 yes to one or more of my questions, if you could
23 please come forward. Come right up here and
24 could I have your name, please.

1 JUROR: Joy Baker.

2 THE COURT: Ms. Baker, do you
3 remember your juror number.

4 JUROR: Three.

5 THE COURT: You had a yes to one
6 or more of the questions asked. Could you tell
7 us about that, please.

8 JUROR: I have some conflicts with
9 the amount of days, the whole beginning every
10 week, even up to four days would be okay. I
11 have a major conflict on Friday, two major
12 conflicts on Friday.

13 THE COURT: Can you tell us what
14 that is without major embarrassment to yourself?

15 JUROR: It's not. My daughter is
16 a dancer, and she has a dance recital, and she
17 has to be at the studio at 3:00. And then I
18 have show tickets at 5:00.

19 THE COURT: Where?

20 JUROR: In Philadelphia, and they
21 cost a significant amount of money.

22 THE COURT: For what show?

23 JUROR: It's for a concert.

24 THE COURT: Who are you going to

1 hear?

2 JUROR: Metallica.

3 THE COURT: Metallica. Good for
4 you. That's great.

5 JUROR: Just cost a lot of money.

6 THE COURT: I say this, it's going
7 to sound facetious, but it's going to sound half
8 serious. Is there a warm up act for Metallica?

9 JUROR: There is two, but I don't
10 know much about them.

11 THE COURT: So you going to see
12 Metallica; right?

13 JUROR: Right.

14 THE COURT: So it wouldn't be
15 ideal to get there late, but if you missed Def
16 Leopard --

17 JUROR: The most important issue
18 is my daughter dances all year and it's
19 something I can't miss, and she can't miss.

20 THE COURT: Something she can't
21 miss.

22 JUROR: It's something we do
23 together. Every other day I'm perfectly fine,
24 I'm just very concerned about Friday.

1 THE COURT: Let's set the concert
2 piece aside, if -- knowing you wouldn't want to
3 miss, surely you wouldn't want to miss your
4 concert, her recital, I'm sorry, but in terms of
5 getting her there, her dad could get her there
6 if it came to it?

7 JUROR: I guess he could take her.

8 THE COURT: Okay. This is a hard
9 question, and again it's not factitious, I ask
10 you, if you were picked and you had to make
11 those arrangements -- by the way, when is the
12 recital itself?

13 JUROR: She's got to be there at
14 3:00.

15 THE COURT: When is the recital?

16 JUROR: I have to pick her up at
17 2:00 because she has to be there at 3:00 at the
18 studio.

19 THE COURT: When does it start?

20 JUROR: 3:00. She has to be there
21 at 3:00.

22 THE COURT: The dancing starts at
23 3:00?

24 JUROR: Right after, yes.

1 THE COURT: Would you hold it
2 against these parties if you were picked and
3 asked to serve and the time pushed into that,
4 would you resent them in a way that would
5 prevent you from being fair and impartial?

6 JUROR: I don't mean to be rude,
7 but probably yes.

8 THE COURT: That's okay. The
9 being honest is very, very important.

10 JUROR: She's wanted to do this, I
11 have been coming up, I have never been picked
12 and I have -- but just it falls at a really bad
13 time.

14 THE COURT: Okay. Understood.
15 Let these other folks ask questions.

16 Ms. Brooks.

17 MR. BROOKS: No. Thank you very
18 much.

19 THE COURT: Mr. Cawley?

20 MR. CAWLEY: No questions.

21 JUROR: Thank you.

22 THE COURT: Thanks so much,
23 Ms. Baker.

24 Okay. Applications.

1 MS. BROOKS: Well, actually Your
2 Honor, I have done the math of the nine and nine
3 hours, I think we're getting it to the jury by
4 midday Thursday with that math, in which case --

5 THE COURT: We ought to be okay.

6 MS. BROOKS: We should be okay.
7 And if there is -- we can consider having the
8 jury come back Monday.

9 THE COURT: Actually I was
10 thinking the same thing, that the problem would
11 be the deliberations, and maybe we could break,
12 which is why I was asking when the dancing
13 starts to think about how far we could push it
14 before we let the jury go. But Mr. Cawley.

15 MR. CAWLEY: I agree with the
16 math, although I didn't account for the 4:30
17 stop time, so it's probably mid afternoon
18 Thursday, but I agree that that's a potential
19 solution here.

20 THE COURT: We'll leave her in the
21 pool for now and if she is selected, we'll
22 explain to her that she's going to get -- if we
23 did that, we just would have to let her go so
24 she could get there. Right?

1 That would be what your clients
2 would want given what she said, and I think
3 that's what we all would want to clear up that
4 commitment, which is understandable that she
5 would want to be there for that important thing.
6 So we'll leave her in the pool.

7 Next person on that row, if
8 anybody had a yes to one more of my questions,
9 if you would come forward, please.

10 Hi. Come forward. Sir, could you
11 give us your name for the record.

12 JUROR: Kevin Records.

13 THE COURT: Mr. Records. Do you
14 remember your juror number by the way?

15 JUROR: 32.

16 THE COURT: You had a yes to one
17 or more of my questions. Can you tell us about
18 that.

19 JUROR: Because when I was younger
20 and I got sick, I have a speech problem, and
21 also I can't read.

22 THE COURT: Okay.

23 JUROR: I got sick and my whole
24 head, it swelled my brain. I can't read now.

1 THE COURT: Okay.

2 JUROR: So -- that's about it.

3 THE COURT: Can I ask you,
4 Mr. Records, do you do something to make a
5 living?

6 JUROR: Yes.

7 THE COURT: What do you do?

8 JUROR: Construction worker.

9 THE COURT: Construction worker.
10 All right.

11 MS. BROOKS: Thank you very much,
12 sir.

13 THE COURT: Mr. Cawley?

14 MR. CAWLEY: Thank you.

15 THE COURT: Thank you,

16 Mr. Records. I appreciate it.

17 Application, it would be obvious.

18 MS. BROOKS: Yes, Your Honor.

19 MR. CAWLEY: Agreed.

20 THE COURT: He's stricken.

21 Okay. The next person on that
22 row, if any, who had a yes to one or more of my
23 questions, could you come forward, please.

24 Hi. Come right up, please.

1 Ma'am, can I ask you your name for the record.

2 JUROR: Jennifer McKelvey -- it's
3 Jennifer Boyd-McKelvey.

4 THE COURT: Do you go by
5 Boyd-McKelvey?

6 JUROR: I go by McKelvey.

7 THE COURT: Do you remember your
8 juror number?

9 JUROR: Eight.

10 THE COURT: You had a yes to one
11 of my questions. Can you tell us about that,
12 please.

13 JUROR: There were two questions,
14 one was you asked if we had ever been a juror
15 before. Yes, I had, twice for a criminal case.

16 THE COURT: How long ago was that?

17 JUROR: Long time ago, fifteen
18 years ago.

19 THE COURT: Do you remember what
20 the verdicts were that you reached in those
21 cases?

22 JUROR: They were both guilty.

23 THE COURT: Is there anything in
24 your experience with having been a juror in the

1 state system all those many years ago that would
2 prevent you from being fair and impartial in
3 this case?

4 JUROR: No.

5 THE COURT: The other question.

6 JUROR: My other concern is I'm a
7 social studies teacher, I do teach economics,
8 certainly not at the level that this is. I do
9 teach elective sociology and street law. I
10 don't know if that's something that would make a
11 difference.

12 THE COURT: Well, we won't be
13 talking about -- talking with your people with
14 street law, you're talking about what sort of
15 concepts, Fourth Amendment?

16 JUROR: It's almost like a cursory
17 question in introduction to law, that's what
18 this is intro to law. Most of what I do is
19 criminal, I don't do any kind of civil stuff.

20 THE COURT: All right.

21 JUROR: Just how it's different
22 from criminal?

23 THE COURT: So is this a case you
24 heard me describe about patents, Parallel

1 Networks holds a patent and they say that
2 Microsoft infringes that patents or invades the
3 rights granted by that patent and Microsoft says
4 we don't infringe or invade the rights, and
5 besides that, your patent is invalid, it's not a
6 good patent. That's the character of the
7 dispute.

8 The economic aspect of the case
9 would come into it because both sides -- if the
10 jury that's seated hears all the evidence and
11 they, you know -- if the jury that hears all the
12 evidence decides that the patent is valid and
13 that Microsoft infringes and those two things
14 are hotly disputed, but if the jury were to
15 decide that, they would have to decide how much
16 Parallel Networks had been injured by that, and
17 whether to give them money for that called
18 damages, that's why there is some economic and
19 accounting aspects of the case.

20 . And both sides will have
21 witnesses they'll bring in to talk about that.
22 Right. Now, I repeat, the preliminary questions
23 are is the patent is valid, is it infringed and
24 if you get past those gates, how much money, if

1 you got through those gates and the evidence
2 came in, would your own knowledge about
3 economics prevent you from being fair to the
4 experts?

5 JUROR: I don't think so. I don't
6 know if that made a difference.

7 THE COURT: You could be fair and
8 impartial to both sides?

9 JUROR: Sure.

10 THE COURT: Ms. Brooks.

11 MS. BROOKS: Thank you very much.

12 THE COURT: Mr. Cawley?

13 MR. CAWLEY: Ms. McKelvey, there
14 used to be a judge named McKelvie.

15 JUROR: No relation. I think he's
16 V-I-E. I get that question a lot. I wish I
17 was. No.

18 MR. CAWLEY: That's all the
19 questions I have. Thanks.

20 THE COURT: Thanks so much,
21 Ms. McKelvey.

22 Ms. Brooks.

23 MS. BROOKS: No applications.

24 THE COURT: Mr. Cawley.

1 MR. CAWLEY: No, Your Honor.

2 THE COURT: She stays in the pool.

3 Next person on that row, if any,
4 who had a yes to any of my questions.

5 Hi. Please come right up. Can I
6 ask your name for the record.

7 JUROR: Alison flu heart I.

8 THE COURT: Ms. Fluharty, do you
9 remember your juror number?

10 JUROR: 12.

11 THE COURT: You had a yes to one
12 or more of the things you I asked.

13 JUROR: My husband is a patent
14 owner.

15 THE COURT: He is a patent owner?

16 JUROR: Uh-huh.

17 THE COURT: Any other questions?
18 Let's talk about that. Now, does your husband
19 work for a company?

20 JUROR: A bank.

21 THE COURT: Does he own the patent
22 in his own name?

23 JUROR: With others.

24 THE COURT: With others.

1 Is it a patent about banking or
2 banking processes?

3 JUROR: No.

4 THE COURT: What's the patent
5 about.

6 JUROR: It's about antiballistic
7 wall systems.

8 THE COURT: To prevent bullets
9 from going through walls. Does he have a
10 business that's built around that patent?

11 JUROR: He's partners with someone
12 else.

13 THE COURT: And they're trying to
14 make money?

15 JUROR: Market them, right.

16 THE COURT: Do they actually make
17 the antiballistic wall systems?

18 JUROR: Uh-huh.

19 THE COURT: Have they ever had a
20 dispute about their patent rights?

21 JUROR: No.

22 THE COURT: Now, in this case,
23 Parallel Networks owns a patent, some patents
24 that Microsoft says your patent is not a valid

1 patent, of course Parallel Networks says it is,
2 Parallel Networks says Microsoft infringes, you
3 invade our rights under the patent, Microsoft
4 says no, we don't, that's the nature of the
5 dispute.

6 Does the fact that your husband
7 has a business that's built around a patent,
8 would that fact prevent you from being able to
9 listen to both sides' arguments and evidence and
10 be fair in this case?

11 JUROR: No.

12 THE COURT: So you wouldn't be
13 worried if you went home, and for example, you
14 found in favor of Microsoft that your husband
15 would say how can you find against the patent
16 owner, that wouldn't worry you?

17 JUROR: No.

18 THE COURT: In contrary, you
19 wouldn't be worried about favoring the other
20 side either?

21 JUROR: No.

22 THE COURT: Ms. Brooks, any
23 questions?

24 MS. BROOKS: As part of his

1 startup business, did he have to seek any sort
2 of like venture capital funding?

3 JUROR: No.

4 MS. BROOKS: So this is solely
5 sort of self funded?

6 JUROR: One of the other people on
7 the patent funded it.

8 MS. BROOKS: And has the business
9 gotten off the ground yet or is it still in its
10 beginning stages.

11 JUROR: It's in the growing
12 stages.

13 THE COURT: Mr. Cawley.

14 MR. CAWLEY: Where do you work?

15 JUROR: I work for an engineer.

16 MR. CAWLEY: An engineering firm?

17 JUROR: Yeah.

18 MR. CAWLEY: And you're a CAD
19 operator?

20 JUROR: Yes.

21 MR. CAWLEY: That's all the
22 questions I have.

23 THE COURT: Thank you so much.

24 JUROR: Thank you.

1 THE COURT: Ms. Brooks.

2 MS. BROOKS: No, Your Honor.

3 Thank you.

4 MR. CAWLEY: Nothing, Your Honor.

5 THE COURT: She's in the pool.

6 Is there anybody else on that row?

7 No. Okay. I think we move to the last row.

8 The first person on that row who had a yes of
9 one or more of my questions. Come right up.

10 Can I have your name for the
11 record, ma'am?

12 JUROR: Stephanie Getz.

13 THE COURT: Ms. Getz, do you
14 remember your juror number?

15 JUROR: 14.

16 THE COURT: You answered a yes to
17 one or more of my questions.

18 JUROR: Yes.

19 THE COURT: Tell us about that
20 please.

21 JUROR: I know you and Michelle
22 were neighbors.

23 THE COURT: Yes, we are. We're in
24 the same neighborhood.

1 JUROR: My husband and two sons
2 are in IT. And lastly, which is the most
3 important, I have a disabled son that gets off
4 the bus and comes home at 2:30.

5 THE COURT: Okay. I'm sorry, I
6 don't see you outside the context of the
7 neighborhood.

8 JUROR: I see Michelle. Out of
9 the context.

10 THE COURT: Beyond. Well, let's
11 take each of those one at a time.

12 And this might be awkward for you,
13 but I got to be completely honest, Ms. Getz,
14 does the fact that you know me, would you hold
15 that against either party in this case?

16 JUROR: I don't think so.

17 THE COURT: Could you be fair to
18 them?

19 JUROR: I think so.

20 THE COURT: I hope so. I hope I
21 haven't done anything to upset you or your
22 family. If I do, we'll go off the record.

23 Second, you say your husband and
24 your two sons, they're all in IT?

1 JUROR: Yes.

2 THE COURT: Do they work with
3 Microsoft products, do you know what they do?

4 JUROR: They are in small
5 companies. My husband is in a small consulting
6 firm for IT. One son works for a small firm in
7 Philly. My other son works for a small startup
8 firm in San Francisco.

9 THE COURT: Would their -- this is
10 a hypothetical. If you were asked to serve on
11 this jury, could you be fair and impartial to
12 both sides and hear the evidence and decide the
13 case only on what the evidence was presented
14 here without worrying about what your sons or
15 your husband might think about the decision that
16 you might render?

17 JUROR: I have been sitting there
18 a long time, so I have been thinking about it.
19 They've always -- they built -- like their own
20 systems since high school. They built their own
21 computer systems and they always try to use
22 small companies, no name brand, they didn't want
23 to get involved in giving money to I'll say, it,
24 monopolies. That's the big computer companies.

1 That's been in my head for years.

2 THE COURT: That's very important.

3 That's very important. So would you be worried
4 if you thought the evidence favored Microsoft,
5 would you hesitate to give a verdict in front --
6 for Microsoft because your sons or your husband
7 might say how could you find for a big guy?

8 JUROR: I have to be honest, I
9 would give it a second thought, only because of
10 just -- not that I pay attention a lot at home,
11 but with all these IT people, but that's just
12 one thing that always stuck in my head, like,
13 the big boys.

14 THE COURT: Now, as for your
15 son --

16 JUROR: I'm it. I'm it. There is
17 no one else home.

18 THE COURT: Is there anyone else
19 who covers for you?

20 JUROR: No. If something is a
21 problem, I have to leave work.

22 THE COURT: Thanks for your time.

23 Wait, I got to give these guys a
24 chance. I apologize.

1 MS. BROOKS: Thank you.

2 THE COURT: Mr. Cawley.

3 MR. CAWLEY: Thank you for being
4 here.

5 THE COURT: Thank you so much.
6 Applications.

7 MS. BROOKS: Yes.

8 MR. CAWLEY: Strike for cause.

9 THE COURT: Struck for cause.
10 Anybody else in that row had a yes
11 to any one of my questions? Okay.

12 Thank you very much for your
13 patience. We're going to have to just confer
14 here for another few minutes and then we'll move
15 to the next stage of this which is actually
16 picking the people who will be sitting in this
17 jury box. So I ask for your indulgence and
18 patience for just a few more minutes while we
19 confer.

20 How many do we have in the main
21 pool?

22 THE CLERK: Five.

23 THE COURT: Does that accord with
24 your notes and your notes?

1 MR. CAWLEY: What was the
2 question?

3 THE COURT: How many in the main
4 bucket?

5 MR. CAWLEY: The main.

6 THE COURT: Count it up again
7 because I need to decide whether I'm going to
8 let them all go or not.

9 MR. CAWLEY: Yes, five is what I
10 have got.

11 THE COURT: If we take those five
12 out, and how many struck for cause?

13 THE CLERK: The ones for cause in
14 --

15 THE COURT: If the ones for cause
16 go, how many do we have?

17 THE CLERK: Eighteen.

18 THE COURT: I need to be able to
19 put fifteen in the pool.

20 THE CLERK: You have eighteen that
21 are being excused for cause, you started with a
22 total of thirty-nine.

23 THE COURT: I have thirty -- nine.
24 How many did we excuse for cause?

1 THE CLERK: Six.

2 THE COURT: You can let those five
3 go. The main bucket is now the struck bucket.
4 All right.

5 Are there any applications,
6 motions or concerns you want to put on the
7 record right now before we move back to our
8 various places and we start drawing the jury?

9 MR. CAWLEY: Can I hear the struck
10 for cause. I only come up with five, so I
11 probably forgot.

12 THE COURT: Can you just step down
13 here and give him the names and the numbers.

14 MR. CAWLEY: Just the numbers are
15 probably easiest.

16 THE CLERK: 27. 20.

17 MR. CAWLEY: 27 is the one I
18 didn't have. So thank you.

19 THE COURT: Which one was that?

20 MR. CAWLEY: Herschel Moore, Tall
21 Pines Maintenance.

22 THE COURT: Tall Pines. Okay.

23 Anything else, Mr. Cawley?

24 MR. CAWLEY: No.

1 THE COURT: Ms. Brooks, anything?

2 MS. BROOKS: No, Your Honor.

3 THE COURT: Everybody, so how
4 we're going to do this, there will be no
5 talking, they'll just walk back and forth with
6 the list. It's the silent structure method.

7 MS. BROOKS: Your Honor, could we
8 have a five-minute break to confer with our
9 consultants plus to use the facilities?

10 THE COURT: Absolutely. I
11 apologize. I'm sort of on autopilot here.
12 That's certainly a fair request. I'll tell
13 people that we're going to take a five-minute
14 break and then everybody has to be back. Let's
15 head back.

16 Okay. Many thanks for your time.
17 Another step in this process we have to go
18 through but everybody has been sitting for quite
19 a while so we're going to take a five-minute
20 break. If anybody needs to get up and go to the
21 restroom and get a drink of water, you're free
22 to do that but you need to be back in five
23 minutes.

24 When we come back what's going to

1 happen is the courtroom deputy is going to be
2 drawing numbers associated with your juror
3 number from this box at random and that way we
4 will get people seated and 14 people in the box
5 and a 15th person in that chair at the other
6 end, and the attorneys will have a chance from
7 that group of 15 to pick the final group of nine
8 jurors who will be sworn to serve as the jury in
9 this case.

10 Okay. So we're going to take a
11 five-minute break right now. See you in five
12 minutes. The Court is in recess.

13 (Brief Recess.)

14 THE COURT: Thanks. Please be
15 seated.

16 THE COURTROOM DEPUTY: Joyce
17 Santiago, please take the seat in the front row
18 of the jury box. Michael Griffith, please take
19 the next seat in the front row of the jury box.
20 William Beaven, please take the next seat in the
21 jury box. John Crystal, would you please take
22 the next seat in the front row. Cecilia
23 Seamans, would you please take the next seat in
24 the front row. Allison Flouridy, would you

1 please take the next seat in the front row.
2 Karl Thomas, will you please take the remaining
3 seat in the front row. Richard Bogg, would you
4 please take the first seat in the second row.
5 Timmy Bush, would you please take the next seat
6 in the second row. Lauren Francis Hester, would
7 you please take the next seat in the second row.
8 Ronald Hollis, would you please take the next
9 seat in the second row. Christopher Walrath,
10 please take the next seat in the second row.
11 Stephen Straneva, would you please take the next
12 seat in the second row. Scott Thomas Passwater,
13 would you please take the remaining seat in the
14 second row. Syreeta Munson, would you please
15 take the seat outside of the jury box, please.

16 For the following jurors, please
17 return to the back of the courtroom. Joyce
18 Santiago, Michael Griffith, William Beaven, John
19 Crystal, Richard Boggs, Stephen Straneva.

20 Would you three take the first
21 three seats in the front row. The first two
22 jurors in the second row, please take the
23 remaining two seats in the front row.

24 Would you three please slide all

1 the way down to the end and would you please
2 take the next seat after those three. Thank
3 you.

4 THE COURT: All right. Ladies and
5 Gentlemen, for those of you who are sitting in
6 the back of the courtroom, you may have already
7 realized that your duty here today is done, so
8 thank you very much for your service. We'll
9 take a moment and you folks can be excused. I
10 will have a few words to say to the folks who
11 have been selected to serve on this jury.
12 Thanks again for your service.

13 All right, Ladies and Gentlemen.
14 Thank you very much for being here. We're going
15 to begin by first, in addition to saying thanks,
16 swear you in to serve as the jury in this case.
17 Is anyone concerned about using the bible? You
18 don't have to, but if you would like to, we're
19 pleased to have you put your hand on the bible
20 and take the oath.

21 THE COURTROOM DEPUTY: Do each of
22 you solemnly swear, those of you who swear, and
23 you and each of you do affirm, where Parallel
24 Networks Licensing LLC is Plaintiff and

1 Microsoft Corporation is Defendant and you will
2 truly render according to the evidence so help
3 you God those of you who swear or you do so
4 affirm, those of you say I do.

5 THE JURY: I do.

6 THE COURT: Thanks very much. Let
7 me explain what is about to happen. I'm going
8 to give you some instructions about the case and
9 what your responsibilities are. Now, you're
10 part of this dispute. Now, you have special
11 responsibilities and I want to explain those to
12 you.

13 Now, at the time of the break, you
14 can take a break and you have a chance to call
15 friends, family, coworkers to let them know
16 about the jury service you are now sworn to
17 render. What I'm about to do is to introduce
18 the trial and principles that you will be asked
19 to apply the evidence that you are about to
20 hear.

21 I will give you detailed
22 instructions about the law at the end of the
23 trial. This is an action of patent infringement
24 arising out of the patent laws of United States.

1 The Plaintiff is Parallel Networks LLC which I
2 will refer to as Parallel Networks, and the
3 Defendant is Microsoft Corporation which I will
4 refer to as Microsoft.

5 Parallel Networks is the owner of
6 the United States patents at issue in this case.
7 There are two patents at issue, U.S. Patent
8 number 5,894,554 which I will refer to as the
9 '554 patent. The other patent is the U.S.
10 Patent 6,415,335 which I will refer to as the
11 '335 patent, and I may also refer to these
12 patents collectively as the patents-in-suit.

13 Copies of the patents will be
14 given to you in the binders you're going to be
15 given with a copy of these preliminary
16 instructions and paper for taking notes.
17 Parallel Networks is related to at least two
18 other companies that may be referred to in this
19 case. InfoSpinner Inc. And Epic Ground, Inc.

20 Microsoft is a technology company
21 headquartered in Redmond, Washington. Microsoft
22 makes and sells the accused Sharepoint and Azure
23 product, operates the accused Bing and MSN.com
24 website systems. I will refer to those as the

1 accused products. I will show you a videotape
2 that's going to give you some background, just
3 general background about the patent system.
4 Okay. So do we have that teed up and ready to
5 play?

6 MR. CAWLEY: It does not appear
7 so.

8 THE COURT: If there are any
9 technology problems, I want you to hold them
10 against me and not against the parties. Wait a
11 minute. Put that on hold. In order for this to
12 be best, I think we have a handout form; is that
13 true?

14 MR. CAWLEY: Yes, Your Honor.

15 THE COURT: Just hand it up to my
16 law clerk. In the meantime, can I see counsel
17 at side bar?

18 (Sidebar Discussion.)

19 THE COURT: I'm seeing concerned
20 looks from some people at counsel table. What's
21 going on?

22 MS. BROOKS: Your Honor, it
23 sounded like the products that are no longer
24 accused, Sharepoint and Azure are still in the

1 preliminary instructions. My apologies.

2 THE COURT: I'm reading from the
3 last thing you guys gave me.

4 MS. BROOKS: Exactly, Your Honor.
5 My apologies.

6 THE COURT: Well, it would be a
7 good thing before that goes to the jury to get a
8 clean copy that they can have, right?

9 MS. BROOKS: Yes, Your Honor. My
10 understanding is the only accused product are
11 the Bing and MSN.com.

12 THE COURT: Okay.

13 MS. BROOKS: Our fault, Your
14 Honor. We didn't catch it.

15 THE COURT: Give me the right
16 thing because it's going to go to the jury with
17 their binder in it.

18 (Sidebar Discussion ended.)

19 THE COURT: Let me correct
20 something I said. Well, actually, Mr. Cawley,
21 would you state for me the accused products for
22 the jury.

23 MR. CAWLEY: It's Bing and
24 MSN.com, Your Honor.

1 THE COURT: Those are the two
2 products which will be referred to as accused
3 products. Okay. Let's run the video.

4 (Videotape being played:)

5 MR. FOGEL: Hello. I'm Jeremy
6 Fogel and I'm now the director of the Federal
7 Judicial Center.

8 As you probably know by now, this
9 is a patent case. So you may be wondering how
10 can I sit in judgment on a case like this when
11 I'm not entirely sure what a patent is. We hope
12 to answer that concern with this brief video
13 which will give you some of the background
14 needed to do your job.

15 This case will involve some
16 special issues that the judge and lawyers will
17 explain to you. But all patent cases involve
18 some basics that you will learn about.

19 This video will discuss what
20 patents are, why we have them, how people get
21 them, and why they're in disputes that require
22 us to call in a jury like you. We'll also show
23 you what patents look like.

24 The United States Constitution

1 gives congress the power to pass laws relating
2 to patents. Article 1, Section 8 quasi allows
3 congress to promote the progress of science and
4 useful arts by securing for limited times to
5 authors and inventors the exclusive right to
6 their respective writings and discoveries.

7 A patent then is an official brand
8 by the United States government that gives its
9 owner certain rights to an invention. Those
10 include the right to stop others from making,
11 using, selling or offering for sale the
12 invention that is claimed in the patent.

13 A patent last for a specific
14 period of time, usually twenty years from the
15 date that the application is filed by the
16 inventor. But because it takes an average three
17 years for the Patent and Trademark Office to act
18 on the application, the effective life of a
19 patent is closer to seventeen years.

20 A patent represents a bargain made
21 between the government and the inventor. In
22 return for the right to prevent others from
23 using the invention, the inventor must enhance
24 the public knowledge, what we sometimes call the

1 state of the art by adding something new and
2 useful to it. A famous example is Thomas
3 Edison's invention of an light bulb. Harnessing
4 electrical power for illumination transformed
5 society and led to many other important
6 breakthroughs.

7 During the lifetime of the patent
8 its disclosure may inspire new inventions and
9 after it expires the invention is free for
10 anyone to use. It is this combination of
11 something new and valuable to the public that
12 justifies granting time limited patent
13 protection to the inventor.

14 A patent is in many ways like a
15 deed to a piece of property. It grants the
16 owner the right to keep people off the property
17 or to charge them a fee like rent for using it.
18 And just as a deed indicates boundaries defining
19 a landowner's property, a patent claim defines
20 the patentee's domain.

21 The patent system works because
22 the inventor is required to describe the
23 invention in clear and specific terms so that
24 the public knows what the boundaries of the

1 invention are.

2 Once a patent is issued by the
3 government, it becomes available for public
4 inspection. In that way, anyone who learns of
5 the patent can read it and understand exactly
6 what the inventor invented and the limits of the
7 patent set forth in the claims.

8 Now that we understand what a
9 patent is, let's take a closer look at the term
10 invention. An invention is a new way of solving
11 a problem or a useful new machine, manufacture,
12 or composition of matter. The patent process
13 begins in the mind of the inventor, and in
14 particular, when the invention is formulated in
15 the mind of the inventor. Patent lawyers call
16 this conception.

17 This is when the idea occurs to
18 the inventor clearly enough that he or she can
19 write it down and explain it to someone. To
20 qualify for a patent, the invention needs to be
21 new and useful. Also, it must not be obvious to
22 one of ordinary skill in the field.

23 If the inventor believes these
24 requirements are met, he or she will prepare an

1 application for filing with the Patent and
2 Trademark Office whose headquarters are in
3 Alexandria, Virginia just outside of Washington
4 D.C.

5 The Patent and Trademark Office,
6 often called the PTO, is the agency of the
7 federal government whose job it is to examine
8 patent applications to make sure they are in
9 proper form and complied with the requirements
10 of the law.

11 The inventor can prepare an
12 application for filing with the PTO, but usually
13 it is drafted by a patent attorney or a patent
14 agent who specializes in what is called
15 prosecuting patent applications. That is the
16 process by which they are evaluated. The
17 attorney or agent works with the inventor to be
18 sure the invention is described and explained in
19 a way that complies with the law and the
20 regulations of the PTO. Ninety-eight percent of
21 patent applications are made on line using the
22 PTO's electronic filing system, although a few
23 paper applications are still made.

24 When the PTO receives the

1 inventor's application, it is first checked to
2 see if it is complete and complies with all the
3 PTO patent requirements. It is then assigned to
4 a patent examiner, a staff person with a
5 background in the field or the art the invention
6 falls within to evaluate the application and
7 decide whether a patent can be granted.

8 You have been given a sample
9 patent to refer to as you watch this video so
10 you already have a sense of what a patent looks
11 like, but now let's take a closer look at the
12 three main parts of the patent.

13 To begin with, there are some
14 basic identifying information on the first page.
15 This material is highlighted in your handout.
16 On the upper right side of the page is the
17 number assigned to the patent by the PTO. And
18 on the left side is a title that describes the
19 invention and the names of the inventors and
20 sometimes the company to whom they have assigned
21 the patent. Also on the left is the date when
22 the patent application was filed. And back on
23 the right, the date when the patent was issued.

24 There are also is more detailed

1 information on the first page, including a list
2 of numbers following the caption field of
3 search. These numbers identify previously
4 issued patents the examiner looked at or
5 searched to make sure the applicant's claimed
6 invention really is something new, not obvious,
7 and thus patentable.

8 Also listed on the first page is
9 what we call references, that is previous
10 patents or articles that describe the technology
11 or prior art known at the time the application
12 was filed. It may seem strange to you that we
13 call this preexisting technology prior art even
14 though it has nothing to do with artist. We use
15 the word art in its historical sense to include
16 inventions and other subject matter reasonably
17 related to the claimed invention.

18 We also refers to the latest
19 technology as state of the art and we say of
20 someone who can understand and apply the
21 technology that he or she is skilled in the art.

22 The second major part of the
23 patent is what we call the specification, or
24 written description. As is in the case in your

1 sample, it is usually the longest part of the
2 patent. It includes an abstract which is a
3 brief summary of the invention, a background
4 section describes the nature of the problem the
5 invention is supposed to solve. One or more
6 drawings called figures that illustrates various
7 aspects of the application. And a detailed
8 description of one or more embodiments of the
9 invention.

10 An embodiment is a specific device
11 or method that uses the invention such as a
12 particular form of light bulb.

13 The third and most important part
14 of the patent is the claims. These are the
15 numbered paragraphs that appear at the end. The
16 claims are what give the public notice of the
17 boundaries of the invention. They are similar
18 to the description of property you may have seen
19 in a deed, referring to precise measurements
20 taken on the ground.

21 The judge will instruct you
22 further on how any technical or ambiguous terms
23 in the patent claims should be understood.

24 Now that we have discussed the

1 main parts of a patent, let's look at how the
2 PTO processes patent applications, what we
3 referred to earlier as prosecution of the patent
4 application.

5 This process begins when the
6 inventor's application arrives at the PTO.
7 There, it receives a filing date. Under the
8 American Invents Act of 2011, filing dates will
9 determine who is awarded the patent if there are
10 competing valid applications. In 2012, the PTO
11 received nearly 600,000 patent applications and
12 issued more than 270,000 patents.

13 After determining that the
14 application is complete, the receiving branch
15 also decides what field of technology an
16 application relates to and assigns it to the
17 appropriate examining. In order to make that
18 decision the patent examiner usually looks at
19 patents that have been issued previously in the
20 same or closely related fields of art. The
21 examiner has computer databases that contain
22 information used to accomplished this task.

23 Another part of the job is to
24 decide if the inventor's description of the

1 invention is complete and clear enough to meet
2 the requirements for a patent, including the
3 requirement that the description enables someone
4 of ordinary skill in the field to actually make
5 and use it. However, because the job of
6 examining so many applications is challenging,
7 the law requires the applicant to tell the
8 examiner whatever he or she knows about the
9 prior art that might be important to the
10 examiner's decision on whether to allow the
11 patent. We call this the applicant's duty of
12 candor. One way the applicant can satisfy this
13 duty is by bringing pertinent prior art to the
14 attention of the examiner either in the original
15 application or in other submissions called
16 information disclosure statements. In this way
17 the decisions of the examiner are based on both
18 the information provided by the applicant and on
19 the information the examiner finds during his or
20 her prior art search. Sometimes the examiner
21 concludes that the application meets all the
22 requirements we've discussed and allows the
23 patent to issue at this first stage. But more
24 frequently the examiner will reject the

1 application as deficient in some respect.

2 This decision will be communicated
3 by the examiner in what is called an office
4 action, which is a preliminary notice to the
5 applicant of what the examiner finds
6 insufficient or unpatentable. For example, the
7 examiner may reject certain claims as being
8 unpatentable because a journal article written
9 and published by another person prior to the
10 effective filing date of the patent application
11 disclosed what the applicant was currently
12 claiming. At that point the applicant prepares
13 a written response either agreeing or
14 disagreeing with the examiner. An applicant who
15 agrees with the examiner can suggest amendments
16 to the application designed to overcome the
17 examiner's rejection. Alternatively, an
18 applicant who disagrees with the examiner's
19 office action can explain the reasons for the
20 disagreement.

21 This exchange of office action and
22 responses goes on until the examiner issues a
23 final office action, which may reject or allow
24 some or all of the applicant's claims. The

1 overall process is referred to as the
2 prosecution history of the application.

3 The written incoming and outgoing
4 correspondence between the PTO examiner and the
5 applicant is also called the file wrapper. In
6 the past these file wrappers were all in paper
7 form as were the submitted applications. Now
8 they are most often electronic and may
9 occasionally be paper as well. Most patent
10 applications filed on or after November 29th,
11 2000, are published by the PTO 18 months after
12 the inventor has filed his or her application so
13 that the public may inspect it.

14 Once a final PTO office action has
15 occurred and one or more claims have been
16 allowed, the applicant is required to pay an
17 issuance fee and the patent is printed. Then on
18 the date shown on the upper right-hand corner of
19 the first page of the patent, it is issued by
20 the PTO and the inventor receives all the rights
21 of the patent. That date is highlighted on your
22 sample.

23 Once a patent has issued, the
24 inventor or the person or company the inventor

1 has assigned a patent to can enforce the patent
2 against anyone who uses the invention without
3 permission. We call such unlawful use
4 infringement. But the PTO and its examiners
5 have no jurisdiction over questions relating to
6 infringement of patents. If there is a dispute
7 about infringement, it is brought to the court
8 to decide.

9 Sometimes in a court case you are
10 also asked to decide about validity; that is
11 whether the patent should have been allowed at
12 all by the PTO. A party accused of infringement
13 is entitled to challenge whether the asserted
14 patent claims are sufficiently new or nonobvious
15 in light of the prior art or whether other
16 requirements of patentability have been met. In
17 other words, a defense to an infringement
18 lawsuit is that the patent in question is
19 invalid.

20 You may wonder why it is that you
21 would be asked to consider such things when the
22 patent has already been reviewed by a government
23 examiner. There are several reasons for this.
24 First, there may be facts or arguments that the

1 examiner did not consider, such as prior art
2 that was not located by the PTO or provided by
3 the applicant. In addition, there is of course
4 the possibility that mistakes were made or
5 important information overlooked. Examiners
6 have a lot of work to do and no process is
7 perfect.

8 Also, unlike a court proceeding,
9 prosecution of a patent application takes place
10 without input from people who might later be
11 accused of infringement, so it is important that
12 we provide a chance for someone who is accused
13 of infringement to challenge the patent in
14 court. In deciding issues of infringement and
15 validity, it is your job to decide the facts of
16 the case. The judge will instruct you about the
17 law, which may include the meaning of certain
18 words or phrases contained in the patent. So it
19 is your primary duty as jurors to resolve any
20 factual disputes and in some cases such as
21 infringement and validity, to apply the law to
22 those facts. To prove infringement the patent
23 holder must persuade you by what is called a
24 preponderance of the evidence relating to the

1 facts of the case that the patent has been
2 infringed. To prove invalidity, the alleged
3 infringer must persuade you by what is called
4 clear and convincing evidence that the patent is
5 invalid. The judge in your case will explain
6 these and other terms and provide additional
7 specific instructions at the appropriate time.
8 Good luck with your task and thank you for your
9 service.

10 (End of videotape.)

11 THE COURT: Now, you've heard some
12 general things on that video and I will give you
13 some information specific to this case. The
14 patent case generally involves at least two
15 steps. The first step is determining whether
16 the accused product method or system falls
17 within the scope of the patent claims, that is,
18 does the accused product, method or system
19 infringe the patent claims.

20 The second step is determining
21 whether the patent is valid. In this patent
22 case, you must determine whether Parallel
23 Networks has proven that Microsoft's accused
24 products directly infringe claims 20, 41 and 49

1 of the '554 patent and claims 43 and 78 of the
2 '335 patent. These claims may be referred to as
3 the asserted claims of the '554 and '335
4 patents.

5 Microsoft denies Parallel
6 Networks' allegations of the infringement and
7 Microsoft asserts that the '554 and '335 patents
8 are invalid. You must decide these issues
9 according to the instructions I shall give you
10 at the end of the trial. Those instructions I
11 will repeat and provide in more detail.

12 This is a civil case. Parallel
13 Networks has the burden of proving infringement
14 by what's called preponderance of the evidence.
15 For a preponderance of the evidence, if you were
16 to put the evidence of both parties on the
17 opposite side of a scale, the party with the
18 burden would have to make the scale tip somewhat
19 in its favors.

20 So Parallel Networks has to
21 produce evidence which, when considered in the
22 light of all the facts, leads you to believe
23 that what Parallel Networks claims is more
24 likely true than not true.

1 Microsoft has the burden of
2 proving that the '554 and '335 patents are
3 invalid by a different standard, clear and
4 convincing evidence. Clear and convincing
5 evidence is evidence that produced an abiding
6 conviction that the truth of a factual
7 contention is highly probable. Those of you who
8 are familiar with the criminal cases may have
9 heard the term proof beyond a reasonable doubt.
10 That burden does not apply in a civil case and
11 put it out of your minds in considering whether
12 the parties have met their burden of proof in
13 this case.

14 It will be your duty to decide
15 what the facts are from the evidence presented
16 here at the trial. You and you alone are the
17 judges of the facts. You will have to apply
18 those facts to the law as I will instruct you at
19 the close of evidence. You must follow that law
20 whether you agree with it or not.

21 In addition to instructing you
22 about the law, I will provide you with
23 instructions as to what the claims of the patent
24 mean. Of course, you are bound by your oath as

1 jurors to follow these and all the instructions
2 that I give you, even if you personally disagree
3 with them. All of the instructions are
4 important and you should consider them together
5 as a whole.

6 You are, as I said, the judges of
7 the facts. I will decide which rules of law
8 apply to this case, but you will decide the
9 facts, perform these duties fairly. Do not let
10 any bias, sympathy or prejudice you may feel
11 toward one side or the other influence you in
12 any way. Do not let anything that I say to you
13 during the course of the trial influence you,
14 except of course to the extent you have to
15 follow the instructions in this case.

16 The evidence from which you will
17 find the facts will consist of the testimony of
18 witnesses and documents and other things
19 admitted into evidence. In addition to evidence
20 may include certain facts that are agreed to as
21 to the parties as I instruct you.

22 Certain things are not evidence.
23 Statements, arguments and questions by lawyers
24 are not evidence. Objections to questions are

1 not evidence. Lawyers have an obligation to
2 their clients to make an objection when they
3 believe testimony and exhibits are being offered
4 into evidence that are not admissible under the
5 rules of evidence.

6 You should not be influenced by a
7 lawyer's objection or by my ruling on an
8 objection. If I sustain or uphold the objection
9 and find that a matter is not admissible, you
10 should ignore the question. Or if I overrule an
11 objection and allow it as evidence, you should
12 consider the testimony or other item as evidence
13 as you would any other evidence.

14 If I instruct you that some item
15 of evidence is admitted for a limited purpose,
16 you must follow instructions and consider that
17 evidence for that purpose only. I will instruct
18 you during the course of trial if that happens.
19 Anything you see or hear outside of the
20 courtroom must be disregarded. You are to
21 decide this case solely on the evidence
22 presented here in the courtroom and in judging
23 the facts, it will be up to you to decide which
24 witnesses to believe, which witnesses not to

1 believe and how much of any witness's testimony
2 to accept or reject.

3 Now, a few words about your
4 conduct as jurors. First, I instruct you during
5 the trial you are not to discuss the case with
6 anyone or permit anyone to discuss it with you,
7 even among yourselves. So you can talk about a
8 lot of stuff, just not what's going on in here
9 until the time is right to deliberate. Until
10 you retire to the jury room at the end of the
11 case to deliberate on your verdict, you are
12 simply not to talk about this case.

13 If any lawyer, party or witness
14 does not speak to you when you pass in the hall
15 or ride the elevator or the like, remember it is
16 because they are not supposed to talk to you nor
17 you with them. In this case, any unwarranted
18 and unnecessary suspicion about your fairness
19 can be avoided. They are not trying to be rude.
20 They're trying to protect your role as jurors.

21 If anyone should try to talk to
22 you about the case, please bring it to my
23 attention. Second, do not read or listen to
24 anything touching on this case in in any way.

1 In addition, do not do any independent research
2 or investigation on your own on matters relating
3 to this case. Don't be tempted to go on the
4 Internet. Just listen to what goes on in here.

5 Finally, do not form any opinion
6 until all the evidence is in. Keep an open mind
7 until your deliberations at the end of the case.
8 During the trial, you're not required to take
9 notes. If you do take notes, you must leave
10 them in the jury deliberation room at the end of
11 each day. Do not take them with you.

12 My courtroom deputy arranged for
13 pens, paper and pencils if you want to take
14 notes. You will find there are pads and pens
15 already in the jury room. However, a word of
16 caution is in order. Some testimony that you
17 consider unimportant at the time presented, and
18 therefore did not write down, may take on
19 greater importance later in the trial in light
20 of all the evidence presented. You are
21 instructed that your notes are only a tool to
22 aid your own individual memory.

23 You should not compare your notes
24 with other jurors in determining the content of

1 any testimony or evaluating the importance of
2 any evidence. The notes are not evidence, and
3 by no means a complete outline of the
4 proceedings or a list of all the highlights of
5 the trial.

6 Keep in mind that you will not
7 have a transcript of the testimony to review.
8 So above all, your memory is what you should
9 rely on when it comes time to deliberate and
10 render your verdict in this case. Now, as I
11 told you we're going to take a break.

12 Before we take the break, I just
13 want to tell you how the trial is going to
14 proceed. Once we come back after lunch, when we
15 begin after lunch, the attorneys will have three
16 opportunities to talk to you during the trial.
17 The first opportunity is the opening statement.
18 During the opening statements, the attorneys
19 will introduce their respective cases to you.

20 As I've already instructed you,
21 however what the lawyers say is not evidence.
22 It will be up to you to determine whether the
23 evidence that is the testimony of the witnesses
24 and the admitted documents support what the

1 lawyers say in their opening statements.

2 The second opportunity that the
3 lawyers have to talk to you is during transition
4 statements. Sometimes there will be a
5 transition from one thing to another at the
6 trial. Lawyers are permitted to making a
7 transitional statement to identify that kind of
8 shifts from one topic to another.

9 Parallel Networks will be the one
10 to call witnesses and present evidence because
11 they bear the burden of proof as to
12 infringement. Then Microsoft will have an
13 opportunity to call witnesses and present
14 evidence thereafter. Parallel Networks Parallel
15 Networks is permitted to present rebuttal
16 evidence as to certain issues and Microsoft may
17 be permitted to present rebuttal as to other
18 issues.

19 Finally, after all of the evidence
20 is in, the lawyers will offer closing arguments
21 and to tie the evidence to their story. I will
22 then give you instructions on the law and
23 describe for you the matters you must resolve.
24 You will then retire to the jury room to

1 deliberate on your verdict.

2 You should generally expect that
3 we will start trial each morning at 9:00 a.m.
4 and finish at 4:30 p.m. with two 15-minute
5 breaks. One in the morning and one in the
6 afternoon and the one-hour break for lunch. As
7 I said earlier, I time my civil trials. Each
8 party is given a certain number of hours to
9 present its evidence. This is to make sure the
10 trial will be completed on a timely basis.

11 If you will, jurors will report to
12 the courtroom on a punctual basis as well, so
13 please be here on time so you are all gathered
14 and we can bring you in the jury box right at
15 9:00 a.m. and I promise we will have you out of
16 here at 4:30, even if we have to stop somebody
17 in the middle of a syllable and say stop.

18 Now, something might happen which
19 may delay the time. But if we're all serious
20 about punctuality, we will always make sure with
21 deliberate speed we will take care of the
22 business we need to take care of. You're going
23 to have a copy of these preliminary
24 instructions. I'm not going to read to you

1 right now the glossary of terms, but I want you
2 to know at the back of the preliminary
3 instructions that I'm going to give you there's
4 a glossary of terms.

5 So you may hear the word
6 assignment, claims, disclosure or description,
7 file, patent application, patent examiner prior
8 art, et cetera and there's just a little
9 definition for each of those so you can keep
10 track. It's not comprehensive. It won't cover
11 every term that you might hear or are unfamiliar
12 with, but we hope it will be of assistance to
13 you.

14 Now, we're going to try to keep to
15 a minimum the number of times that I have you
16 sit there while I talk to the lawyers at side
17 bar. I know that that can be a bit of an
18 imposition. But please bear with me while I
19 speak to the lawyers at side bar.

20 (Sidebar Discussion.)

21 THE COURT: Okay. Any objections
22 or concerns with the preliminary instructions as
23 provided? Mr. Cawley?

24 MR. CAWLEY: No, Your Honor.

1 THE COURT: Ms. Brooks?

2 MS. BROOKS: No, Your Honor.

3 THE COURT: I will send them to be
4 back at 1:35 and I will ask that make sure folks
5 are here and ready to call up your first
6 witness.

7 MR. CAWLEY: I will do opening.

8 THE COURT: No. What I mean is I
9 want your witnesses here because we will go from
10 straight from opening.

11 MS. BROOKS: Is there a way to --

12 THE COURT: Dim the lights?

13 MS. BROOKS: The big one.

14 THE COURT: We were sort of
15 working on that question. We will work on that
16 over lunch.

17 MS. BROOKS: Thank you, Your
18 Honor.

19 (Sidebar Discussion Ended.)

20 THE COURT: We will break and you
21 folks will be back at 1:35 and I will ask the
22 courtroom deputy to escort you back to the jury
23 room at this time. Thank you very much.

24 Ladies and Gentlemen, we're in

1 recess. See you at 1:35.

2 (Lunch Break.)

3 THE COURT: Please be seated.

4 Ready to proceed?

5 MR. CAWLEY: Yes, Your Honor.

6 THE COURT: Very good. Bring the
7 jury in. Dim the lights.

8 Is that better.

9 MS. BROOKS: Yes, Your Honor.

10 THE COURT: Is that all right,
11 Mr. Cawley?

12 MR. CAWLEY: I will feel my way
13 through the darkness, but that's all right.

14 THE COURT: Well, we want to make
15 it right for you because it's your opening.

16 MR. CAWLEY: It's fine like this.

17 (Jury enters.)

18 THE COURT: Please be seated. You
19 will notice we have dimmed the lights a little
20 bit. It's not because we want anybody napping
21 after lunch. We are hoping it will prevent a
22 wash-out of the lights so you will see on the
23 screen. So we can go ahead and hear opening
24 statements from the parties.

1 Mr. Cawley.

2 MR. CAWLEY: Thank you, Your
3 Honor. This is a case about man who invented a
4 way to help the Internet work better. He
5 applied for a patent, actually two patents on
6 his invention. And after years of study, the
7 United States Patent Office awarded him two
8 patents, the Patent Office concluding that his
9 invention was new, was not obvious and was
10 useful.

11 Microsoft uses his invention and
12 makes a lot of money from using it, despite that
13 Microsoft refuses to pay fair value for their
14 use of the patents. That, Ladies and Gentlemen,
15 is why we're here today.

16 The owner of the patents has filed
17 this lawsuit asking you or jurors like you to
18 come here to hear the evidence and at the end of
19 the trial to conclude that it's a good patent,
20 that Microsoft infringes it and to determine the
21 amount of money that Microsoft should be
22 required to pay as a reasonable royalty for
23 using the patents over many years.

24 I'd like to introduce to you Mr.

1 Keith Lowery. If you will stand up, please.
2 You will meet Mr. Lowery because he will be the
3 first witness in the trial. Mr. Lowery actually
4 grew up most of his childhood here in Delaware.
5 His father worked for Dow -- Dupont, excuse me.
6 No offense to the good folks at Dow or Dupont.
7 Eventually his father was transferred to New
8 Mexico and Texas.

9 When he got out of high school,
10 Mr. Lowery went to college or started college in
11 Arkansas. While he was there, he met his wife,
12 a woman who he's still married to. And a few
13 months later they had their first child. Things
14 were going well for Keith, but as we all know
15 life has a way sometimes of throwing us a curve
16 ball and unfortunately, that's what happened to
17 Keith.

18 When he had finished about two
19 years of college, he was diagnosed with a
20 potentially fatal heart defect. He had to have
21 open heart surgery and fortunately it was
22 successful, although he had to drop out of
23 school. He couldn't afford to go on. And he
24 and his wife and baby moved to Corpus Christi,

1 Texas so they could be near Keith's parents.

2 He looked around Corpus Christi to
3 find a job to support his family and the best
4 thing he could find was making it in a business
5 called Minuteman Oil Change. I'm sure you've
6 seen places like this. They are like Jiffy
7 Lube, quick oil changes where you drive in and
8 they swarm over your car and change your oil.

9 The job Mr. Lowery got was working
10 in the pit. The pit is the hole under your car
11 in the concrete where somebody is running around
12 down there who drains the oil and transmission
13 fluid. One day he was working in the pit. He
14 was trying to move a 55 gallon barrel of lube
15 and he had a hernia and he had to have surgery
16 to correct that.

17 The surgeon, although it was
18 successful in correcting the hernia, told him he
19 couldn't do manual labor for several months.
20 Keith's boss didn't like the sounds of that
21 because he didn't want Keith sitting at home
22 collecting Workers' Comp. Insurance and causing
23 the boss's premium to go up, so he told Keith
24 instead to report to the Minuteman office where

1 he wouldn't have to do manual labor.

2 The boss wasn't sure what he was
3 doing but it would be better as far as the boss
4 was concerned than sitting at home. After
5 looking around the office, the boss remembered
6 that not long before he had bought a radio shack
7 computer. Now, this is the early 1980s and if
8 any of you can remember, those computers were
9 not much like they are now.

10 It was a very simple piece of
11 machinery, but Keith's boss had no idea how to
12 use it really and Keith didn't either. So what
13 the boss decided is that every day when the
14 pieces of paper came in from the different
15 Minuteman locations to the office, it would be
16 Keith's job, at least until he recovered from
17 the hernia, to type into the computer what was
18 on the paper, so that's what he started to do.

19 What he discovered was that some
20 days if they were really busy, it took him most
21 of the day to type in the day's papers into the
22 computer. But if they weren't very busy,
23 sometimes he would go through that job in an
24 hour and his boss wouldn't let him go home. So

1 here is Keith Lowery, he's bored, he's in a dead
2 end job. He's killing time until he's able to
3 go back into the pit.

4 One afternoon looking for
5 something to do, he picked up the manual for the
6 radio shack computer and the first few pages of
7 this manual with its instructions about how to
8 operate a computer. But in the back of the
9 manual is a thick volume was the actual computer
10 code that the machine ran on.

11 Now, as you probably know computer
12 code is frequently referred to as the language
13 because it's like a foreign language. If you
14 don't know how to read it, it means nothing to
15 you. I don't know how to read it. It would
16 certainly mean nothing to me, but Keith Lowery
17 made a remarkable discovery. He could
18 understand it. Page after page he realized that
19 if he followed it carefully he was able to
20 understand the computer code for that Radio
21 Shack computer. He didn't understand it all at
22 once but in his spare time, he went all the way
23 through that manual and taught himself not only
24 to read but to write that computer language.

1 That was a turning point in his
2 life and led to his involvement in computer
3 programming, in software and in computer systems
4 that 30 some-odd years later goes on is still
5 his career to this very day.

6 The first thing he did in his
7 office hours again when there was nothing else
8 to do in the office was to actually rewrite the
9 software that he had been using on the Radio
10 Shack computer to make it work better for
11 Minuteman's needs. It worked and it was better.
12 And when his boss found out about it and saw
13 what it could do, he promoted Keith to
14 comptroller of the entire company.

15 Keith stayed there just a few
16 years until he decided he had outgrown
17 Minuteman. He went to work for some of the
18 largest software companies first in the
19 Southwest and then in the entire nation.
20 Fast-forward ten years, Keith has become an
21 experienced, not just programmer but an
22 experienced designer of computer systems and
23 networks. That puts us to just about the early
24 1990s.

1 And in the early 1990s, some
2 people were beginning to talk about something
3 called the Internet. It is hard to believe in
4 the world we live in that lots of people hadn't
5 never heard of the Internet if your memory goes
6 back that far. No Google, no Amazon.com, no
7 eBay, certainly no Facebook. None of that even
8 existed and a lot of people were skeptical that
9 the Internet would ever amount to anything.

10 And Keith honestly was originally
11 one of those people. He didn't really see what
12 the point of the Internet was. Basically, all
13 it was at that time was pretty brochures for
14 companies, except for being printed on paper
15 they were available on the computer screen.

16 What is the big deal. But on the
17 trip out of the country where he was invited to
18 go to Australia to speak about computer systems
19 in an economic event occurred that he will tell
20 us about that made him reconsider the
21 possibility that the Internet might be real,
22 might be something that could really be valuable
23 and that people could make money off of it.

24 To figure out if that was true

1 once he got back to the United States, he did
2 what Keith does as you've heard. He decided
3 that to really understand the Internet he needed
4 to personally read about it, he needed to become
5 fluent in the specification that controlled the
6 Internet and he needed to write his own
7 experimental website to see if it would work and
8 it did.

9 That work convinced Keith Lowery
10 that he had been wrong about the Internet, that
11 there was a huge future in it and he saw a
12 future in which that would be pretty much the
13 rest of his career, but he also saw a problem.
14 A problem with the way the Internet worked way
15 back in those early days in the middle 90's.
16 And it was something that scientists, that you
17 will hear, called scalability, whether a system
18 can scale and that word you will learn simply in
19 that context means can it get bigger.

20 Sure, it may work on a small scale
21 but will it also work on a big scale. It may
22 work if Keith is the one who's doing his little
23 experiment. It may work if a handful of people
24 are going on a website for Sears just to see the

1 page and get the phone number.

2 But what's going to happen when
3 thousands, when millions of people want to
4 access that same site and Keith based on his
5 experiments could see the way people were doing
6 it, then wasn't going to work.

7 He will show you this when he
8 testifies. He will show you that the computer
9 like the computer in your home, the client, he
10 will explain to you that's what it's called, has
11 to communicate with a web server, a computer
12 service else connected by wire or connected by
13 Wi-fi and that web server can easily be
14 overloaded by too many people wanting
15 information at the same time.

16 Now, Keith wasn't the first person
17 to have seen this problem. Lots of people in
18 the computer industry had seen it. And the way
19 that they proposed to fix it back then was to
20 build bigger and bigger computers for the web
21 server so if the web servers they had now got
22 overwhelmed, they would build a bigger computer.

23 Keith didn't think that would
24 work. He knew that there eventually would come

1 a limit on computers, the size of this desk, the
2 size of this courtroom. There's going to be a
3 limit and it wouldn't be a long-term solution
4 for millions of people to come to a site just
5 because the computer got bigger.

6 The solution that Keith saw
7 because he was working mostly in a home office
8 in his bedroom, he didn't have a big computer
9 the size of a refrigerator. He had a little
10 computer. But it occurred to him that instead
11 of making bigger and bigger computers, you could
12 take relatively small computers and link them
13 together into a network and that would do the
14 same thing. Not on that, but it had the
15 advantage of essentially being infinitely
16 scalable. As long as you prepared to add a new
17 computer to the network, it could get bigger and
18 bigger and as big as you need for as many people
19 that you want to accommodate for your website.
20 But that created another problem, sort of the
21 fly in the ointment of Keith's solution.

22 As we all know, computers are not
23 completely reliable. Sometimes they break down.
24 Sometimes computers get busy and get slow. On

1 the other hand, sometimes computers in a network
2 like that has spare time. They are available
3 and sometimes computers in the network might
4 even have done what is being requested, gotten
5 that information so recently that that computer
6 still has in its memory and is able to supply it
7 instantly.

8 The problem is that the web server
9 doesn't know anything about all of those
10 computers in the network. So Keith conceived of
11 an invention where he would put together
12 software that was intelligent. It was a brain
13 for the system. He called it in the patent a
14 dispatcher. You will see it in the drawings of
15 the patent and Keith will show you on a white
16 board how he thought of it and how it worked.
17 But basically the dispatcher or the brain knows
18 what's going on with the computers in the
19 network. It shows who's down. It know who's
20 too busy. It knows who has capacity available.
21 It may know who already has the needed
22 information in its memory and the brain,
23 dispatcher, because it is also able to mail
24 intelligent discussions, where to send the

1 request for information. It doesn't just go out
2 randomly.

3 Instead the dispatcher says
4 Computer No. 1, broken, don't do it. Computer
5 No. 2, too busy. Computer 3 has time and that's
6 where I'm going to send the request. This was
7 something that had never been done before. And
8 that formed the basis of Keith Lowery's
9 invention. And Keith believed in his invention.

10 At the time again in the
11 mid-1990's, he was working for a software
12 company in Silicon Valley in California. And
13 when his invention worked out, he took it to
14 that company and explained it to him and he said
15 I think this is the future of the World Wide
16 Web. On the Internet this is the way it's going
17 to work. And I think we should do it -- we
18 should form a business like this and go after
19 that future.

20 The people who ran his company
21 said, no, the Internet is just a toy. It's not
22 going anywhere. We're not interested. So Keith
23 had a decision to make. Did he believe in his
24 invention deeply enough to take a risk or would

1 he play it safe and keep going to his good
2 paying job and basically -- well, you probably
3 know the answer to what he did or we wouldn't be
4 sitting here today. He decided to leave his
5 paying job with the software company in
6 California and to start his own business selling
7 software that would provide people who run
8 websites with his invention. And that's what he
9 did.

10 He already knew some other people
11 who could help him. He raised a hundred
12 thousand dollars from his uncle, and they
13 proceeded to build a product that used his
14 invention. Before you know it, they had
15 customers. A major software company in Germany
16 gave them almost a million dollars. Other
17 companies entered into agreements to sell their
18 product in the United States, their product, I
19 mean Keith's product, in the United States and
20 to sell it abroad.

21 Before too many years, the
22 product, the software that Keith and others put
23 together using his invention was in 800
24 different installations in twenty-two different

1 countries around the globe.

2 Eventually companies from Japan
3 and other companies invested millions of
4 dollars. As the market began to change, Keith
5 and his business, which was rapidly growing,
6 changed with the market, still using his
7 invention to try and be as current as he could
8 and compete with the giants of the industry.

9 Eventually by the year 2000 or so,
10 Keith's company had grown from about twenty
11 employees to about 300 and he raised \$90 million
12 in investments.

13 He was using that \$90 million to
14 build a computer system, literally around the
15 globe using his invention.

16 As you've already heard, he
17 applied for a patent on his invention. Now, we
18 don't really have time in this opening statement
19 to get deeply into the patent, so I'll just tell
20 you, here is one of the important figures or
21 drawings that you will hear testimony about in
22 this case from the patents. This is a figure
23 that depicts the prior art, and you remember
24 from the video this morning, prior art is a

1 patent law word that means what people were
2 already doing before the invention.

3 And you will hear witnesses who
4 will take you through this figure and explain to
5 you what it means and what people were already
6 doing before Keith had his idea.

7 This figure from the patent will
8 explain or help to Keith's invention. And
9 again, we don't really have time to get into
10 detail about it in this statement, but what
11 you'll hear testimony about is the web client,
12 remember that, that's a computer that you might
13 have in your home or office or business or
14 wherever it is, that it communicates with the
15 web server, you'll remember that, and there is
16 the dispatcher. The dispatcher that is the
17 brain of the invention that knows what's going
18 on with these smaller computers called page
19 servers, and can make intelligent decisions
20 about where it wants to send requests for
21 information to the page servers to more
22 efficiently get that information back to the web
23 client.

24 The patent office studied these

1 ideas for three years, three years of studying
2 in the US patent office before they issued Keith
3 and his co-inventors who had helped him write
4 the patents and come up with parts of the
5 invention, their first patents.

6 Then they studied again for
7 another three years before they issued the
8 second patent.

9 So that brings us to about the
10 year 2000. The business is going great.
11 They're all over the world. They're on the
12 verge of raising another hundred million dollars
13 that it's going to take to complete that global
14 network of computers, they have gotten one US
15 patent and another is on the way. Life raises
16 its ugly head again, and some of you may
17 remember, but if you don't, you will from the
18 testimony in this case. In the year 2000-2001,
19 something happened in the economy called the
20 .com crash. The .com crash meant that a lot of
21 little companies and some not so little that had
22 gotten started as internet companies in the boom
23 discovered eventually that they ran out of
24 money. Keith's business wasn't one of those.

1 He didn't run out of money, but he ran out of
2 customers because the customers for his software
3 were those usually smaller internet companies
4 that frequently went out of business in the .com
5 bust.

6 That put a lot of stress on the
7 business. And to adapt to that, they made
8 decisions to downsize, first of all, and it soon
9 became obvious that they weren't going to be
10 able to raise the additional investment to build
11 the global network, so they had to scale way
12 down.

13 At that point, since the company
14 was no longer involved in making new software
15 products, and that's Keith's specialty, that's
16 what he does is make software products, he
17 decided and they decided on friendly terms that
18 he would leave the company. They still owned
19 his patents, but that's okay, that's the deal
20 that they made, and he went off to do other
21 things.

22 Around this time, though, partly
23 as the influence of the .com boom and bust,
24 Keith began thinking that as he looked at

1 websites of some other major companies, that it
2 sure appeared as though they were using his
3 idea. It wasn't immediately easy to see that.
4 But Keith knows enough about it to sort of see
5 the tracks in the sand from the performance of
6 websites to know that it sure looks like they're
7 doing what he invented and had a patent on.

8 Around this time, 2002 or 3,
9 another person comes on the scene. His name is
10 Terry Fokas. You'll meet him when he testifies
11 in the trial. Mr. Fokas was a lawyer and he
12 represented the company that Keith's patents
13 were in that Keith worked for trying to build
14 out the global network. The name of that
15 company was Epic Realm. Terry Fokas gave legal
16 advice to Epic Realm as it was downsizing after
17 Keith left and eventually when they decided it
18 was hopeless and closed the company altogether.

19 But in that process, Terry got to
20 know Keith. And he got to know Keith's patents.
21 And he believed in Keith and believed in his
22 patents.

23 So Terry Fokas eventually came up
24 with a way to buy the patents out of Epic Realm

1 as it was going out of business.

2 Terry Fokas with Keith's help
3 formed a new company to put the patents in that
4 eventually became Parallel Networks, the
5 plaintiff in this lawsuit.

6 Now, as I said, Keith had been
7 suspicious for some time that big companies who
8 ran big websites were using his invention.

9 After Terry Fokas started Parallel
10 Networks, Keith and Terry and others decided
11 that they needed to do a more rigorous study to
12 find out if that was true or not. And that
13 brings us to Microsoft.

14 You know Microsoft. Microsoft was
15 back then the biggest software company in the
16 world, and still is today.

17 Terry Fokas arranged for a
18 detailed study of all of the information he
19 could obtain publicly about how Microsoft
20 operates its website or operated back then. And
21 he discovered, after substantial work, that
22 Keith Lowery's instinct was right, they were
23 using the invention.

24 So, on behalf of the company,

1 Parallel Networks, Terry Fokas contacted
2 Microsoft. He did what you would expect someone
3 to do who wants to negotiate a fair license
4 deal. He contacted Microsoft, he told them
5 about the patents. He sent them copies of the
6 patents. He negotiated with them. Eventually
7 he sent them detailed reports that show on a
8 line-by-line basis exactly how --

9 MS. BROOKS: Objection, Your
10 Honor.

11 THE COURT: All right. I'll hear
12 counsel at side-bar.

13 (Side-bar discussion:)

14 THE COURT: Your objection.

15 MS. BROOKS: Your Honor, this was
16 the subject of the motion in limine where
17 Mr. Fokas sent the claim charts to Ms. Quan and
18 Your Honor granted that motion, this should not
19 be discussed before the jury.

20 THE COURT: Mr. Cawley.

21 ME. CAWLEY: Your Honor, that was
22 that the document which was marked 408 was
23 inadmissible and shouldn't be raised, but we're
24 free to talk about the fact that we sent them

1 claim charts.

2 THE COURT: Well, you have the
3 advantage on me because I don't have the
4 transcript in front of me. So I'm going to ask
5 you to do this, skip it in your opening.

6 MR. CAWLEY: Okay.

7 THE COURT: I'll look at it and
8 see what I can find before you get on that,
9 before you get into it with them during your
10 testimony.

11 MS. BROOKS: And just very
12 quickly, may I note that the claim charts were
13 marked 408, and the E-mail was the cover of
14 that, that was the basis of Your Honor's ruling.

15 THE COURT: I'll take a look at
16 the transcript.

17 (End of side-bar.)

18 MR. CAWLEY: So Mr. Fokas
19 negotiated with Microsoft and they responded by
20 asking questions and having dialogue for a year,
21 and two years, and longer than two years until
22 finally it became obvious that Microsoft had no
23 intention of paying fair value for the use of
24 this invention.

1 So at that point, Parallel
2 Networks had no choice but to file this lawsuit
3 to recover fair value.

4 During the course of the trial, we
5 will call four witnesses. The first you've
6 already met, it will be Keith Lowery. He will
7 explain how he got into the business of
8 software, how he invented what eventually became
9 patented and why it's important.

10 The second witness is named
11 Dr. Mark Jones. Professor Jones is a professor
12 of computer science at Virginia Tech University.
13 He has been for many years. In this case, Keith
14 Lowery, Terry Fokas, other people who were
15 working for Parallel Networks, were not allowed
16 to see Microsoft's secret computer code or
17 secret documents, Microsoft is not going to show
18 it to them voluntarily. But the judge in the
19 case required Microsoft to give that secret
20 information --

21 MS. BROOKS: Objection, Your
22 Honor.

23 MR. CAWLEY: -- to this expert --

24 MS. BROOKS: Argumentative.

1 THE COURT: Yes. I'm going to
2 sustain the objection. Let's stay away from
3 editorializing about secret and just talk about
4 what happened. All right, Mr. Cawley?

5 MR. CAWLEY: Sure.

6 Microsoft gave its computer code
7 and its documents to Mr. Jones for him to
8 review. You will hear him testify that he spent
9 many hours studying the patents, studying
10 Microsoft's code and documents, and concluded
11 that Microsoft infringes the patents.

12 He will come here, either later
13 today or tomorrow morning, to testify to you and
14 to actually show you the infringement.

15 One of the tools he'll use to do
16 this will look like this. You remember that the
17 Judge explained to you that what's covered by
18 the patent is set forth as the claims of the
19 patent, numbered paragraphs. And that to make
20 sure there is infringement of a claim, in this
21 case it's claim 43 as you can see, you have to
22 go through every line, and sometimes every word
23 of that claim and ask, okay, does Microsoft do
24 that? And if they do it all, there is

1 infringement.

2 The charts that you will see
3 during Dr. Jones' testimony that look like this
4 will be his method of showing you on a
5 color-coded basis where the evidence is in
6 Microsoft's own code or documents and then
7 matching it up with the words of the patents,
8 and showing you at the end of that work, it's
9 all colored in, it's all there, and they
10 infringe.

11 The next witness that you will
12 hear from, the fourth one is John Bone.
13 Mr. Bone is a professional in the licensing
14 business. What he does for a living, among
15 other things, is to determine the amount of a
16 reasonable royalty for using a patent.
17 Sometimes that's important because companies are
18 negotiating and they want to reach an agreement
19 and they want an opinion about what a reasonable
20 royalty would be to agree to.

21 But it's also relevant in an
22 instance like this where someone has refused to
23 pay a reasonable royalty, and instead a jury has
24 to determine the amount of a reasonable royalty.

1 Now, at the end of the case, Judge
2 Jordan will give you some very detailed
3 information about the things you should consider
4 in determining the amount of a reasonable
5 royalty in this case.

6 Mr. Bone will take those factors,
7 will apply them to this case, and will express
8 to you the opinion that a reasonable royalty for
9 Microsoft's infringement in this case is
10 \$10,800,000. That's \$10.8 million, and he will
11 explain to you the basis for that conclusion.
12 And at the end of the trial after you've heard
13 all of the evidence about infringement, about
14 the validity of the patent, Parallel Networks
15 will ask you to award \$10.8 million as damages.

16 Now, of course, you'll also hear
17 from Microsoft. And I won't attempt to try to
18 cover what I'm sure Microsoft's lawyers will
19 cover with you in some detail. But what I
20 believe will happen is that Microsoft will
21 basically offer you or try to offer you evidence
22 that shows that they'll essentially say anything
23 about the patents to try and avoid paying fair
24 value.

1 MS. BROOKS: Objection.

2 Argumentative.

3 THE COURT: Sustained.

4 Please, Mr. Cawley, go ahead.

5 MR. CAWLEY: Sure.

6 Now, ladies and gentlemen, let me
7 conclude.

8 The last thing I want to tell you
9 is that I want to make you two promises. The
10 first promise is we won't waste your time.
11 We're only going to call four witnesses.
12 They're not going to repeat each other. With
13 some of them like Dr. Jones, we have the
14 responsibility for proving to you that there is
15 infringement, so we have to do that carefully
16 and thoroughly, but we'll make it go as fast as
17 we can.

18 And the second promise is this,
19 some of you may be saying to yourself along
20 about now, why am I on this jury? I thought
21 maybe I was coming to hear something about a car
22 wreck, instead I'm hearing about software and
23 computer systems. I don't really know much
24 about those things. How is it that I'm going to

1 be asked to make a decision?

2 And what I would tell you about
3 that, ladies and gentlemen, is that this is an
4 important case. And that Parallel Networks has
5 spent a lot of time and frankly a lot of money
6 to bring to the courtroom experts who not only
7 are expert in their field, but are expert
8 teachers. And my second promise to you is when
9 the evidence is over and Judge Jordan ask you to
10 go back to the jury room to begin your
11 deliberations, you will understand everything
12 you need to know to make a decision in this
13 case.

14 I thank you for your time. And we
15 look forward to beginning the evidence.

16 THE COURT: Thank you, Mr. Cawley.
17 Ms. Brooks.

18 MS. BROOKS: Thank you, Your
19 Honor.

20 Good afternoon, ladies and
21 gentlemen. As I introduced myself to you
22 earlier, my name is Juanita Brooks and along
23 with my colleague, Martina Hufnal, over the
24 course of this week we are going to have the

1 pleasure and privilege of speaking to you on
2 behalf of Microsoft.

3 Let me start by making one thing
4 perfectly clear, Microsoft is not refusing to
5 pay Parallel Networks \$10.8 million for
6 technology it is allegedly using. Microsoft is
7 refusing to pay Parallel Networks anything for
8 technology it is not using. The technology that
9 Parallel Networks is saying is their invention
10 is not. It is Microsoft's invention and was, in
11 fact, invented well before Parallel Networks
12 ever even applied for their first patent.

13 And over the years, Microsoft has
14 improved upon and innovated upon that
15 technology. And that technology is
16 substantially different than the invention that
17 Mr. Lowery came up with all those many years
18 ago.

19 Now, I can't expect you to just
20 take my word for it, and I'm not going to ask
21 you to, you're going to hear witnesses who
22 actually will come in who did the actual writing
23 of the code that created our technology. And
24 they're here in court today and I'll introduce

1 them to you as I go through my opening
2 statement.

3 But before I get into the details,
4 and unlike Parallel Networks' attorney, I am
5 going to go into the patent, because at the end
6 of the day, what you're going to be asked, the
7 question you're going to be asked when you go
8 into the jury room is, did Parallel Networks
9 prove that Microsoft is infringing their patent?
10 And the only way you can answer that is to
11 understand the patent and understand the
12 technology.

13 So let's step through it if we
14 could. We'll go back in time, the early
15 internet. So this is way back when, even before
16 Parallel Networks. It was very basic. I don't
17 know if any of you remember, I am definitely old
18 enough to remember where you have the person,
19 the person is called the client, that would be
20 you, the user, and you make a request to a
21 server.

22 And by the way, the reason it's
23 called a server, it's there to serve you. You
24 make a request, and it will get the information,

1 gather the information you have asked for and
2 send it back to you. And that's called client
3 server systems. Those were the early days of
4 the internet.

5 So what happened? What happened
6 was it was great when there was just a few
7 users. But the more users you got, the servers,
8 we put -- they don't actually emit blue and red
9 and green smoke, but this is trying show you,
10 they would crash. Too many requests and
11 inability to be able to handle and answer all
12 those requests, so the server would crash. So
13 what was the solution? The solution was add
14 more servers. That's easy; right?

15 But then the dilemma was if you
16 added more servers, how would you know which
17 requests should go to which server? Right?
18 Because it wouldn't do you any good if you added
19 more servers and then all three of those
20 requests still went to the same server while the
21 other two servers sat idle. So what was the
22 solution?

23 Microsoft's solution was something
24 called a gateway server. And it sits between

1 the client whose making the request, and what we
2 call the back end servers who will respond to
3 the requests.

4 And what the gateway server does
5 is it will reach out to those back end servers
6 and basically say hey, how busy are you? What
7 are you guys handling?

8 I know I'm talking about this like
9 they're human beings, but I don't know any other
10 ways to talk about ones and zeros. It reaches
11 out, the gateway servers and inquires of the
12 back end servers basically what their bandwidth
13 is, and then will determine which server to
14 route which request to. And this was
15 Microsoft's solution well before Parallel
16 Networks ever entered the scene.

17 And then, I mentioned you won't
18 have to take my word for it, you're going to
19 hear from Bill Griffin who is hear standing in
20 the front row. And Mr. Griffin is still to this
21 day a principal software engineer at Microsoft.
22 He's been there for twenty-three years. And he
23 was one of the original developers of what
24 you're going to hear about, the MSN system. And

1 he's going to tell you about how he developed it
2 and the kind of work he did on it.

3 Mr. Griffin has a bachelor of
4 science in computer engineering from the
5 University of Alaska in Anchorage, and that's
6 where he has lived his whole life until he began
7 working at Microsoft. He will be our first
8 witness, but we have to go second so you'll hear
9 from him later in the trial.

10 But what Mr. Griffin is going to
11 tell you about is his work on this project
12 called Marvel. And it was named after the
13 Marvel comics. And the various components of it
14 were actually named after the super heros in the
15 Marvel comics. So when you're looking at the
16 document, you'll see various names that may
17 remind you of super heros of Marvel comics.
18 That that's not an accident, that's what the
19 engineers, who have a particular sense of humor,
20 thought was a cool way to name the various
21 software components they were doing.

22 If you look right here, it's
23 highlighted, that's the gateway that I just told
24 you the Marvel gateway. This is an actual

1 document you can see. It's about this big, and
2 in there Mr. Griffin will show you where they
3 identified this problem that's supposedly
4 Mr. Lowery had recognized it, but he recognized
5 it a couple of years later. They identified
6 this problem of the need to do what's called
7 load balancing. That is take the various client
8 requests and balance the load of answering those
9 requests between the various back end servers.

10 And as a result of his work,
11 Mr. Griffin was actually awarded a United States
12 patent, along with his co-inventors. And this
13 is a timeline of the invention of MSN.

14 So to walk through this, as early
15 as 1993, so these dates are important so you can
16 put into perspective, Parallel's invention
17 versus Microsoft's. In 1993, the MSN, which
18 stands for Microsoft System Network -- did I get
19 that right, Mr. Griffin? Microsoft Network
20 begins 1993.

21 In October of 1994, the
22 specification I just talked about is created,
23 and in it, this issue of load balancing is
24 identified as early as October of 1994.

1 And then in June of 1995, the
2 patent I just showed you was filed. And in that
3 patent contained the solution to the load
4 balancing problem.

5 So that was in June of 1995. And
6 then in August of 1995, yet more patents were
7 filed by Mr. Griffin's team dealing with the MSN
8 system.

9 And then on August 24, 1995, MSN
10 1.0 with the load balancing solution that I just
11 described, the gateway was actually released to
12 the public inside Windows 95. So it was out
13 there in the public as early as August, August
14 24 of 1995.

15 Now, where does Parallel Networks
16 fit into this? Parallel Networks did not file
17 for the patent at issue until April 24th, 1996,
18 almost two years after the MSN project began,
19 and several months after MSN 1.0 with the load
20 balancing solution inside Windows 95 was
21 released to the public.

22 Now, to be fair, you will hear MSN
23 was an internet solution and not a worldwide web
24 solution, because back in those days, the

1 worldwide web was just getting started.
2 Worldwide was probably a very complimentary term
3 for what the web was like back then, it was just
4 beginning. Eventually, indeed not that long
5 after, this same solution would be deployed by
6 Microsoft on the worldwide web.

7 So this is the history of
8 Microsoft solution and the history of where
9 Parallel Networks' licensing enters the scene.

10 Now, again to be clear, we're
11 talking now about technology that Microsoft
12 created back in 1995. So what's happened since
13 then? What's happened since then is that
14 Microsoft has continuously innovated. You may
15 some of you recall Windows 95, followed by
16 Windows 2001, followed by Windows Vista, which
17 some may not think was a great innovation, but
18 some may, followed by Windows 7 which some of us
19 still love, followed by Windows 8, followed by
20 Windows 10.

21 Now, why is it that Microsoft,
22 other than to perhaps sometimes annoy people,
23 why is it Microsoft is constantly innovating,
24 and that is because technology is constantly

1 changing. If you don't constantly innovate,
2 technology will leave you behind and you will go
3 the way of some other companies that did during
4 the .com bust.

5 So Microsoft is constantly
6 innovating to keep up with the needs of the
7 users.

8 So let's look at what it looked
9 like back in '95, which is when Parallel
10 Networks began working on the issue. On the
11 left here we see what computers looked like back
12 in '95. We have come quite a long ways since
13 then and it hasn't been that long. In the
14 middle, that's what cell phones looked like back
15 in '95, and sadly, that's what the Sony Discman
16 looked like back in '95 and doesn't look like
17 anymore paragraph but that was the technology
18 that existed back in 1995. Now, what about the
19 worldwide web, what was it like back in 1995?

20 Well, in 1995 the very first sale,
21 E commerce sale occurred on the worldwide web.
22 And believe it or not, it was someone ordering a
23 pizza from Pizza Hut. And they're very proud of
24 that by the way that they made the first E

1 commerce sale in 1995 and it was for a pizza
2 with mushrooms and extra cheese.

3 Fast forward to 2012, which is
4 Parallel Networks' asking for damages on our
5 products going back from 2012 to the time the
6 patent expired, so what was the web like in
7 2012? In 2012, there was one trillion dollars
8 of E commerce conducted on the web, from that
9 pizza back in 1995 to one trillion dollars.

10 And so let me stop right there,
11 because that is truly the key to this case.
12 These are the current accused products,
13 Microsoft's MSN, our current version or the
14 version existing since 2012 and Bing, your
15 website. So these products deal with today's
16 issues, a worldwide web in 2012 had twelve --
17 sorry, one trillion dollars in sales.

18 Mr. Lowery's invention, once he
19 filed that patent, became frozen in time. That
20 invention can be no more than what was claimed
21 when that application was filed in the patent
22 office.

23 And so as much as technology may
24 advance, and have more demand and more change,

1 the patent can't, it's frozen in time.

2 But Microsoft's technology can, we
3 can continue to innovate and change our products
4 to be able to keep up with what the current
5 issues are.

6 So these are the two products,
7 they're called accused products. These are the
8 products that Parallel Networks is accusing of
9 infringement of trespassing on their 1995
10 patent. So let's look at the patent now. I
11 think -- I don't know if you have your notebooks
12 yet, but you'll be getting them and in there
13 will be the two patents at issue.

14 And you saw the video, the title
15 of the patent in this case, I'll just use the
16 '554 patent -- by the way, patent numbers are
17 really long, so we just use the last three
18 digits to refer to the patents.

19 Looking at the '554 patent, the
20 title kind of tells it all. When you look at
21 the claim, you'll see that the title is actually
22 a very nice summary of the solution that
23 Mr. Lowery came up with. It's a system for
24 managing dynamic web page generation requests,

1 so that's just asking for content that might
2 change. Dynamic web page generation requests by
3 intercepting the request at the web server and
4 routing it to the page server thereby releasing
5 the web server to process other requests.

6 What does that mean? What it
7 means, and I'll walk you through the claim to
8 show you, is that in Mr. Lowery's invention,
9 that request that goes from the client to the
10 web server needs to get out of the web server as
11 expeditiously as possible to get to the page
12 server, the servers that are going to gather up
13 the information so that that web server can now
14 process a new request.

15 You will see that Microsoft's
16 system is just the opposite, we hang on to the
17 request at the web server, and a large amount of
18 what we do with that request takes place at the
19 web server.

20 And there is a reason for that
21 that I'm going to get to in a minute, and there
22 is a reason why Mr. Lowery did it essentially
23 the opposite.

24 So rather than just read words,

1 let's dive a little bit deeper in the patent to
2 see how it works. This is figure 4 in the
3 patent. When I say the patent, I'm talking
4 about Mr. Lowery's patent. Here is figure 4.
5 I'm not going to read the blocks to you. We
6 have actually done an animation and there is no
7 disagreement by Parallel Networks, this is an
8 accurate animation of how the claims would work.
9 So what we have, here comes the request.
10 They're asking for FDI.gov database. It goes
11 into the web server. It goes into what they
12 call the interceptor and it says this is asking
13 for dynamic content. I'm going to send it onto
14 the dispatcher.

15 The dispatcher will decide this
16 page server is the one I'm going to send it to,
17 to create the web page. The web page comes back
18 and goes back to the client. It's a nice simple
19 solution back in 1995. And this is how that is
20 translated in the form of the actual asserted
21 claims.

22 So what's a claim? When you get
23 patents, you will see the claims are in the back
24 of the patent. And as the video said, the

1 claims are -- it's like a deed to a property.
2 So if you have a property deed, it defines your
3 boundaries to the northwest corner of 100
4 degrees to the southeast corner at 150 degrees,
5 so that you and all your neighbors can know
6 what's your property and what isn't so that you
7 can say you're trespassing and you neighbors can
8 look at your deed and say actually I'm not.
9 Read your deed, and that's what the claim is.

10 The claim is like that, only it's
11 to intellectual property versus real property.
12 And you will see that this claim, it's very,
13 very long, but our expert Dr. Long is going to
14 take you through every step of the claim. And
15 in order for Microsoft to be infringing or
16 technology has to practiced or actually do every
17 single thing the claim requires.

18 And what you're going to see is we
19 don't do the vast majority that the claim
20 requires. And again -- oh, there's one more
21 thing I need to tell you about. In addition to
22 this language in the claim, and this will also
23 be in your binder, the Court has also given some
24 definitions to some of the words in the claim.

1 And here is one, the definition of
2 intercepting, because the claim requires that
3 the request gets intercepted from the web server
4 and sent over to the page server. And that
5 means according to the Court's construction that
6 that request is diverting, the diverting of the
7 handling of the request before the request is
8 processed by the web server or the HTTP
9 compliant device. What does that mean? That
10 means just what it says.

11 What the evidence is going to show
12 you is that that doesn't happen in the Microsoft
13 system. In fact, the request is never diverted.
14 The request actually sits in the web server and
15 new requests are generated that go out to the
16 page servers, and the original client request
17 sits in the web server and something called the
18 cooks(ph) request sits in the web server.

19 The web server hangs onto -- it
20 never intercepts it or diverts it. We do the
21 opposite of Mr. Lowery's idea. Why, because we
22 can. We have the technology to do it. And if
23 you look at the solution in the '554 patent,
24 another part of the patent is what's called the

1 specification and there will be all these words
2 leading up to the claim.

3 And counsel for Parallel Networks
4 said that the problem Mr. Lowery was trying to
5 solve is scalability so it can work on a small
6 scale, but you need it to work on a large scale
7 and Mr. Lowery was trying to make that happen.
8 So according to the patent what was his
9 solution? It wasn't just to solve scalability.
10 It was just to increase performance, security
11 and extensibility which means being able to
12 extend or have more things of the back-end.

13 So what does the patent tell us
14 how Mr. Lowery solved that? Performance, he
15 solved it by having the page server be
16 configured in a certain way. Microsoft doesn't
17 do it that way. We do it at the web server. He
18 solved the security problem by having the page
19 server be configured in a certain way.
20 Microsoft doesn't do it that way. We do it at
21 the web server.

22 What about extensibility? He
23 solved it by having the page server be
24 configured in a certain way. You know what I'm

1 going to say, we don't do it that way. We do it
2 at the web server. And finally, scalability,
3 again the solution was back at the page server
4 with Mr. Lowery, and with Microsoft it all
5 happens at the web server, so substantially
6 different.

7 So Mr. Lowery thought it's not a
8 good idea to do it at the web server because
9 according to the patent doing it at the web
10 server will slow down the device and make it
11 become highly sufficient.

12 Mr. Lowery believed it would
13 increase efficiency. But there's another reason
14 why Parallel Networks didn't do it at the web
15 server level, the way we do it. And that reason
16 is they didn't have a web server.

17 So there is a document, and
18 I'm going to need my reading glasses for a
19 second. This is an internal document from a
20 company called InfoSpinner, so you're going to
21 see a lot of the documents in the case with a
22 lot of different names. So just to give you a
23 general idea, Parallel Networks Licensing, the
24 Plaintiff, wasn't always Parallel Networks

1 Licensing.

2 So as you see certain documents
3 that we're going to show you from the Plaintiff,
4 they are going to have different companies'
5 names on them so you can know that when you're
6 seeing the documents and not get confused.

7 The company started as InfoSpinner
8 and then it became Epic Realm Inc., so you might
9 hear that name and then it became Epic Realm
10 Operating, Inc. So you might hear that name and
11 then it became Epic Realm Licensing. So you
12 might hear that name, and then it became
13 Parallel Networks, LLC and then eventually the
14 name of the current Plaintiff, Parallel Networks
15 Licensing. So if you see any of those names,
16 they are essentially a previous iteration of the
17 Plaintiff.

18 So what do they say way back when?
19 When Mr. Lowery was first coming up with this
20 project, this document says that they weren't
21 going to really get into the business of being
22 web server and they were working on a little web
23 server that was going to shift with their
24 product. It was about 80 percent complete but

1 they decided to halt work on it.

2 Way back when Parallel Networks,
3 then InfoSpinner decided not to create a web
4 server because it wasn't critical to moving the
5 technology forward, meaning they're in the most
6 immediate future. And why wasn't it critical,
7 because they were doing everything at the page
8 server and you will see from Microsoft engineers
9 that our web server isn't just critical.

10 It's mission critical, because the
11 vast majority of the processing of the request
12 happens at the web server.

13 I'm sorry. I doubt you can read
14 this so I'm going to read it to you off of this.
15 This is the testimony of Mr. Lowery under oath
16 at his deposition.

17 He was asked this question:

18 "Question: Were there ideas that
19 you just jettisoned along the way" -- meaning as
20 he was working on his project that we've heard
21 about. "Were there ideas that you jettisoned
22 along the way, things that didn't pan out"

23 He said, "You know, when we
24 originally started, we thought we were going to

1 ship, you know, a fully functional commercial
2 web server.

3 We ended up shipping a web server
4 with our product but more as the testing a
5 development tool because it was a lot of people.
6 There were a number of companies in the market
7 with commercial web servers that offered an
8 ability to sort of hook out functionality in
9 those web servers."

10 One of those companies was
11 Microsoft. We already had our fully functional
12 commercial web server out there and we did
13 everything in our web server and Parallel
14 Networks did virtually nothing in their web
15 server. So I showed you how the patented
16 invention worked back in 1995. Now, let's look
17 at how Microsoft's accused product works.

18 We will go with Bing. So imagine
19 that you put a request into Bing and one day
20 maybe some people will say I Binged, rather than
21 I Googled it, but imagine you decided to use
22 Bing as your search engine or tool and you put a
23 request in. Here comes the request. It's not
24 all of this is in the web server. It gets

1 parsed out.

2 The original request stays right
3 there and a new request with information and yet
4 more requests are created and those requests go
5 out to the application servers and gather the
6 requested information, create the web page and
7 then sends it back to the client. I know that
8 went a little fast but the witnesses will walk
9 you through it much slower. But the bottom line
10 is the original request never leaves the web
11 server.

12 Until the whole thing is
13 processed, the response is returned, and then
14 and only then is that piece of memory in the web
15 server freed up to process other requests. The
16 exact opposite of what the claim requires in
17 this case. And you're going to hear from by Mr.
18 Alam who is here. There's Mr. Alam. He is a
19 distinguished engineer at Microsoft.

20 He's been there for two decades.
21 He started as an intern in 1996 and then came on
22 full- time. And he joined what's called the IIS
23 team. You will hear what IIS is. It sits in
24 the web server and it processes the client

1 requests. He helped write the code along with
2 his team.

3 He has extensive knowledge of all
4 of the IIS systems in the case and he has a
5 Bachelor's of Science in Computer Engineering
6 from the University of Waterloo, Canada where he
7 was born and spent his whole life until he came
8 down to Microsoft. It was the first time he
9 left home and since then, he's been at Microsoft
10 since two decades. He will walk you through
11 what he and his team did to create the IIS
12 pipeline.

13 I see some of you starting to get
14 the after-lunch look and I don't blame you, but
15 I will make this short. This is all part of the
16 web server. Now, the page server. The request
17 comes in, the client requests and the first
18 thing that happens is it goes down here to this
19 thing called HTTP.sys and that's where the
20 original client request is going to sit keeping
21 the connection open with the client through the
22 entire client transaction until the response
23 comes back and goes back to the client. It
24 never leaves the web server. The exact opposite

1 of Mr. Lowery's invention.

2 And then what happens is that sits
3 there and a new request is made. The one comes
4 in is called a raw request and a new request
5 where information is extracted from it critical
6 information is called a cooks request. We will
7 call that request No. 2.

8 Request No. 2 will then go through
9 the pipeline and then their called handlers here
10 and here and here. And remember the Court's
11 construction is for the invention you've got to
12 intercept that request before it is handled in
13 the web server.

14 Microsoft handles it repeatedly
15 and this is now Request No. 2. And by the way,
16 the claim also requires one request so we don't
17 do that either. We have multiple requests so
18 Request No. 1 is sitting down here, the raw
19 request. Request No. 2, the cooks request,
20 works its way up to this handling in the
21 pipeline until it gets to execute handler and
22 then a determination is made.

23 You see the arrows going into two
24 directions, which way is that request now going

1 to be because it sits there. It doesn't leave
2 either. Yet more and more new requests are
3 created and they then get distributed to the
4 page server to create the information to come
5 back. I know this is a lot at this late hour,
6 but this is to give you a high-level view of all
7 the ways we don't infringe.

8 This is a better blow-up. So this
9 shows you the pipeline. This is HTTP.sys where
10 Request No. 1 sits. Here is the pipeline that
11 handles the request and all these requests and
12 then execute handler. Then even more requests
13 are dispersed back to the page server. There's
14 one other way we don't infringe and you will
15 hear David Maltz, he's not here but he's taking
16 a Red Eye because he had to take his kids to
17 school. He will be here tomorrow.

18 Mr. Maltz, who is also an engineer
19 at Microsoft, is responsible for the network
20 infrastructure of the two accused products.
21 He's been at Microsoft for over a decade and has
22 a Ph.D. in computer science from Carnegie Mellon
23 and he's going to tell you about yet this other
24 layer that sits in the web server called

1 FrontDoor and how it does even more handling of
2 the requests and yet creating even more
3 requests, yet an entire other level and layer
4 for what we do at the web server and why we
5 don't infringe the claimed invention. And he'll
6 walk you through some schematics that show you.
7 And again, you can't see it. I apologize.

8 So this top line says, user.
9 requests/response and then there's an arrow coming
10 down and now it's going into FrontDoor. And down
11 here at the bottom you can visually -- you can't
12 because the screen is not dark enough but I will make
13 sure you will see it, but the new requests are named
14 differently.

15 One is called Experiences and
16 API's request/response. That's the first arrow
17 and Legacy API's request/response so that shows
18 you that the claimed invention requires only one
19 request.

20 And here when we get you a better
21 copy, you can read for yourself that there are
22 yet more requests with even different names so
23 we don't come close to what the claimed
24 invention requires. So just to finish, let's

1 say you did a search for pizza on Bing. This is
2 what the web page could come back looking like.

3 Have you ever wondered how it is
4 they know where you are? You put in pizza and
5 you get back a list of pizza parlors where you
6 are. This is an actual search. We did it for
7 you. You cannot do any searches. This is an
8 actual screenshot. We put in the word pizza
9 here in Wilmington and we got images of pizza
10 and the list of restaurants, a map where pizza
11 parlors are in Wilmington and even further
12 suggestions of other searches we might do. The
13 only way that we can send something back like
14 this to the client request is because of all the
15 stuff that's done in the web server. The exact
16 opposite of the idea that Mr. Lowery had back in
17 1995.

18 Now, I want to clear one other
19 thing up. Counsel for Parallel Networks said
20 that we're refusing to pay them the \$10.8
21 million and that's why they sued us. Well,
22 first of all, that's not the whole story. What
23 really happened is that Parallel Networks
24 actually sued a client of Microsoft's called

1 QuinStreet for infringement accusing QuinStreet
2 of infringing for using our software and
3 Microsoft came in and filed what's called a
4 declaratory judgment action.

5 This is the actual document,
6 Third-party Defendant Microsoft Corporation
7 claim for declaratory judgment against Parallel
8 Networks. We actually sued Parallel Networks
9 for a declaration from the court that we don't
10 infringe. But what happened is when we did
11 that, Parallel Networks had that case
12 transferred to Texas so we filed here in
13 Delaware.

14 Parallel Networks had that case
15 transferred to Texas and also then sued
16 Microsoft in Texas. And then eventually what
17 happened there is that Parallel Networks and
18 Microsoft entered into a joint stipulation that
19 that case in Texas would be dismissed and then
20 Parallel Networks sued Microsoft in Delaware so
21 we were in Delaware, Texas, Delaware.

22 And the testimony of Mr. Fokas,
23 the lawyer who has an interest in Parallel
24 Networks, at his deposition he was asked about

1 the Texas case and the top part is actually his
2 first answer. Remember, I told you how the
3 court defined certain terms in the claims.

4 And he says, "The Texas court
5 defined dispatching, and I'm paraphrasing here,
6 of course the order exists but the -- my memory
7 is the District Court" -- he was talking about
8 the Texas court -- "defined dispatching as
9 routing a request to a page server based on
10 static or dynamic information."

11 And the question to him was: "And
12 the issue as you testified yesterday was that it
13 created a validity issue for the patent; is
14 that correct?"

15 Answer: Yes."

16 And so after that the Texas case
17 is dismissed and then Parallel Networks sues
18 Microsoft here in Delaware and that's this
19 lawsuit. And indeed it is true we, Microsoft,
20 are not willing to pay Parallel Networks
21 anything because we're not using their
22 technology. It is as if Parallel Networks is
23 asking us to pay them rent for the home we built
24 on our property.

1 We're standing on principle. We
2 won't do it. It's our invention. It's our
3 technology. It's our land and we are not
4 infringing and we will ask you at the end of the
5 day when we come -- not at the end of today, but
6 at the end of the week when we come back, for
7 you to find for Microsoft based on that. Thank
8 you very much.

9 THE COURT: All right. Thank you,
10 Ladies and Gentlemen. This is probably a good
11 time for us to take our afternoon break. I told
12 you we would take a break in the morning and a
13 break in the afternoon, 15 minutes. So we will
14 now take a break until five minutes after 3:00.

15 (Jury exited.)

16 THE COURT: Please be seated.
17 There's some things I'd like to cover with you
18 really quickly. One is I will remind people I
19 expect both sides to take care of the
20 sequestration of their witnesses. The second is
21 do we have a corrected set of preliminary jury
22 instructions yet because we've told them we're
23 going to give them those.

24 I'd like to give them those so I

1 will ask you to show up with them and make sure
2 both sides are comfortable that it's got the
3 correction in it that we made.

4 MS. BROOKS: It's in the works.
5 We will get them here right away.

6 THE COURT: Okay. And as we take
7 a break, I will go up and try to find a copy of
8 the transcript. I'd appreciate it if while I'm
9 doing that, counsel would get together and see
10 if they can come to a meeting of the minds
11 looking at the transcripts yourselves about what
12 is and isn't in bounds and out of bounds. And
13 if you've got a disagreement, I want to be able
14 to hear about it outside of the hearing of the
15 jury.

16 Will we be hitting that with the
17 first witness, Mr. Cawley?

18 MR. CAWLEY: No, Your Honor, and
19 not the second witness.

20 THE COURT: Okay. That gives you
21 a chance to talk about it tonight. So if you
22 need to come in here at 9 o'clock to cover it, I
23 can be here. Give a call to chambers. Although
24 I have other things to do, you have me at your

1 disposal.

2 MR. CAWLEY: Just as a
3 clarification, the parties are in agreement that
4 the fact witnesses will be sequestered and the
5 expert witnesses are exempt from the
6 sequestration and of course, one court
7 representative per side is exempt.

8 THE COURT: So you're exactly
9 right, Mr. Cawley. Anything from you, Ms.
10 Brooks?

11 MS. BROOKS: No, Your Honor. Just
12 for the record we have identified Mr. Alam as
13 our corporate representative.

14 THE COURT: Okay. Thank you. The
15 court is in recess.

16 (Brief break.)

17 THE COURT: Thank you. Please
18 bring the jury in. You can be seated until they
19 arrive. Who is going to be doing the first
20 witness, Mr. Cawley?

21 MR. CAWLEY: Mr. Lowery.

22 THE COURT: Who will be doing the
23 examination?

24 MR. CAWLEY: I will.

1 THE COURT: Thank you. We'll hand
2 out the binders as soon as the jury comes in.

3 MR. CAWLEY: The jury binders?

4 THE COURT: We have them here. No
5 objection that we can hand them out.

6 MR. CAWLEY: Not at all. You want
7 us to bring somebody up to hand them out.

8 THE COURT: No, we'll have the
9 clerks do it.

10 (Jury entering the courtroom at
11 3:05 p.m.)

12 THE COURT: Okay. Ladies and
13 gentlemen, thank you. You may be seated. I ask
14 the courtroom deputy to hand out to you now
15 binders with the information relative to the
16 first witness you're going to be hearing.
17 They'll just hand them to the folks there at
18 this end and ask you to pass one down to each of
19 your colleagues.

20 Mr. Cawley, would you please call
21 your first witness.

22 MR. CAWLEY: Thank you, Your
23 Honor. Parallel Networks calls Mr. Keith
24 Lowery.

1 THE COURT: Mr. Lowery, you may
2 take the stand.

3 THE CLERK: Place your right hand
4 on the bible. Please state and spell your
5 entire name for the record.

6 THE WITNESS: Keith Lowery,
7 K-E-I-T-H. L-O-W-E-R-Y.

8
9 KEITH LOWERY,
10 the deponent herein, having first
11 been duly sworn on oath, was
12 examined and testified as follows:

13 THE COURT: All right.
14 Mr. Cawley, you may proceed.

15 MR. CAWLEY: Thank you, Your
16 Honor. Your Honor, pursuant to our earlier
17 discussion, I have a list of exhibits which are
18 unobjected to. May I read those to the jury and
19 move their admission.

20 THE COURT: Please.

21 MR. CAWLEY: There are about
22 twenty of them.

23 THE COURT: Let me just say
24 something real quickly to the jury. To save

1 time, where the parties have been able to agree
2 that a piece of evidence can come in, rather
3 than having them laying the foundation through
4 question and answer, we have just agreed that if
5 they read those exhibit numbers into the record,
6 that will be sufficient because the exhibits are
7 not objected to, and so that will take place
8 now. And those exhibits I believe are in the
9 binders that are in your hands right now.

10 So go ahead, Mr. Cawley, if you
11 wouldn't mind reading that into the record. Not
12 all of them are --

13 MR. CAWLEY: I'm sorry, Your
14 Honor. I don't think the binders of exhibits.
15 We do have binders of exhibits for the witness
16 and the Court and other side.

17 THE COURT: My bad. I apologize,
18 ladies and gentlemen. These exhibits that
19 you're going to hear the witness testifying
20 about are the exhibits that have the numbers
21 that you're going to hear read in just so you
22 know and I know that they're all legitimately in
23 evidence.

24 Go ahead, Mr. Cawley, if you

1 would.

2 MR. CAWLEY: Thank you, Your
3 Honor.

4 At this time we would move into
5 evidence the following plaintiff's exhibits: 6,
6 14, 20, 59, 60, 68, 71, 76, 79, 90, 110, 126,
7 150, 167, 173, 186, 193, 896, 910 and 911.

8 THE COURT: All right. And we're
9 agreed that those are all unobjected to;
10 correct, Ms. Brooks?

11 MS. BROOKS: That's right. That's
12 right, Your Honor.

13 THE COURT: Thank you.

14 All right. Mr. Cawley, you may
15 proceed.

16 MR. CAWLEY: Thank you, Your Honor

17 DIRECT EXAMINATION

18 BY MR. CAWLEY:

19 Q. Would you please state your name
20 and introduce yourself to the jury and explain
21 why you're here, sir?

22 A. My name is Keith Lowery. I'm one
23 of the inventors of the patent in the suit and
24 I'm here to testify about that.

1 Q. What did you invent?

2 A. Basically a way, a technique or an
3 invention that makes the internet work better.

4 Q. How did you make the internet work
5 better?

6 A. Essentially by making it possible
7 to harness together the computing capacity of
8 many computers so that you can serve many, many
9 requests for pages that are dynamically
10 generated.

11 Q. Is your invention important?

12 A. I think it's fundamental to the
13 way big websites scale and work today.

14 Q. Who benefits from your invention?

15 A. I think website owners I know
16 benefit because we can accommodate gigantic
17 users, a billion Facebook users, those are
18 challenges, I think the users themselves
19 probably benefit because they have
20 responsiveness and they're not sitting around
21 being irritated by websites unnecessarily.

22 Q. In this case, what are you asking
23 the jury for?

24 A. I'm hoping the jury will find that

1 Microsoft uses this invention, that they
2 infringe on the patent and then award a fair
3 value for the use of those invention.

4 THE COURT: Just a moment.

5 MS. BROOKS: Objection, Your
6 Honor, as far as calling for an opinion
7 regarding infringement.

8 THE COURT: Overruled. Go ahead.

9 BY MR. CAWLEY:

10 Q. Now, at the end of the case,
11 Mr. Lowery, if the jury decides that the owner
12 of the patents, Parallel Networks, is entitled
13 to money damages, would you get a part of that
14 money?

15 A. I sure hope so.

16 Q. Why do you say you hope so instead
17 of you know so?

18 A. Well, I'm a shareholder in
19 Parallel Networks. I have a percentage of
20 ownership in that company, but there is a lot of
21 expenses that go into bringing a case like this.
22 There is a lot of people that have to be paid.
23 And only if Parallel Networks after paying their
24 operating expenses and all the costs of this get

1 to the point where they do a distribution to
2 shareholders would I see some part of that.

3 Q. Before we learn more about your
4 invention, I would like for the jury to hear a
5 little bit of background about you.

6 Have you always been involved in
7 software?

8 A. Since the early '80s, just since
9 then.

10 Q. Where did you grow up?

11 A. My earliest memories of a child
12 are in Carlsbad, New Mexico. I moved up here
13 after I finished first grade. I moved to Newark
14 right down the road and went to grade school and
15 junior high and moved away when I was going into
16 high school.

17 Q. Did you go to college?

18 A. I did for a while.

19 Q. Where?

20 A. I went to the university in
21 Searcy, Arkansas called Harding University.

22 Q. Where what did you study?

23 A. I studied biblical languages and
24 theology.

1 Q. Did anything of personal
2 importance happen during your years at Searcy?

3 A. Yeah. I met my wife in school
4 there. And about ten days before our first
5 anniversary our first son was born.

6 Q. Were you able to graduate from
7 Harding University?

8 A. I was not.

9 Q. Why not?

10 A. About six weeks after my son was
11 born, a doctor discovered a birth defect in my
12 aorta, part of my vascular system near my heart
13 and I had to have open heart surgery.

14 Q. Were you able to continue in
15 college after that?

16 A. Not at all, certainly not then.
17 Financially I needed to take a break and work
18 for a while.

19 Q. What did you do to support your
20 family?

21 A. When we moved to Corpus Christi
22 where my family lived and I got a job working in
23 a fast oil change place called Minuteman Oil
24 Change.

1 Q. What was your job at Minuteman?

2 A. I worked underneath the cars in
3 the pit, pulling transmission pans off and
4 dumping the fluid and draining the oil out of
5 the crankcase and replacing oil filters and that
6 kind of thing.

7 Q. Were you able to support your
8 family during that?

9 A. I did. I had to work sixty hours
10 a week, but I was able to do it.

11 Q. How long did you work in the pit?

12 A. Maybe nine months or a year,
13 something like that.

14 Q. And then did anything else happen
15 that threatened that job?

16 A. Yeah. I was moving a barrel of
17 gear lube, a big 55 gallon drum of really thick
18 oil and popped a hernia, ended up in the
19 hospital having hernia surgery.

20 Q. What did your doctors tell you
21 about your recovery from that surgery?

22 A. Well, I wasn't allowed to do
23 manual labor for quite a number of weeks, and so
24 I couldn't go back to work in the store, the oil

1 change stores for a while.

2 Q. What did your boss say about that?

3 A. He didn't want me collecting a
4 bunch of workers' comp so he offered me a job in
5 the office and I took that opportunity to do
6 that so that he wouldn't have his workmans' comp
7 rates go up.

8 Q. What job or task did he assign to
9 you in the office?

10 A. It was a data entry job, basically
11 keeping up with all the inventory data about all
12 the oil change stores.

13 Q. And what were you supposed to do
14 with that data?

15 A. I was supposed to take the paper
16 invoices that came in from the stores, and read
17 down through there and update the inventory
18 information for each oil change or transmission
19 fluid change that had taken place that day.

20 Q. Were you putting this into a
21 computer?

22 A. I was. There was a little Radio
23 Shack computer that he had just bought and
24 bought an inventory program and I was entering

1 it in the inventory program.

2 Q. Orient us to what time this is?

3 A. This is probably 1981, actually.

4 Q. Do you have a picture of the
5 computer or the type of computer that you were
6 working on?

7 A. I mean, I think there is a picture
8 of one.

9 Q. Let me show you demonstrative
10 Exhibit A. What's that?

11 A. That's a TRS 80. That's just the
12 kind of computer I used to work on.

13 Q. Now, Mr. Lowery, up until this
14 time, your work on this Radio Shack computer,
15 did you know much about the inside of computers?

16 A. No, I did not.

17 Q. On an average day at the office
18 for Minuteman, how long did it take you to type
19 in the papers that you were supposed to be
20 typing in?

21 A. It varied, but probably on average
22 I was done by lunch every day.

23 Q. And did you get to go home after
24 that?

1 A. No. No. I had to stay at work.

2 Q. How did you like this job?

3 A. It was boring.

4 Q. What did you do while you were
5 sitting around many days bored?

6 A. Well, I sort of cast about looking
7 for something to engage my mind and I found all
8 the manuals that came with the TRS 80 and I
9 started reading them.

10 Q. And is that something that changed
11 your life?

12 A. It did in a huge way, certainly.

13 Q. Would you tell the jury about
14 that?

15 A. So I got to reading these manuals
16 and just out of sheer boredom, really, and what
17 ended up happening was I found that if I read
18 them enough, I could start to understand what
19 they were talking about, and I began to sort of
20 have ideas about improving the systems we were
21 working on at that time.

22 Q. Did you teach yourself the
23 language of that computer?

24 A. Sure. In that case, the inventor

1 program was written in a language called basic.
2 And I learned basic and learned to make changes
3 to that piece of software.

4 Q. Did you make the changes?

5 A. I did.

6 Q. How did it work?

7 A. It worked great. The problem was,
8 it's a generalized inventor program. It wasn't
9 really oriented toward oil changes, so I made
10 the changes to reporting to do more interesting
11 to reporting for our purposes in oil changes.

12 Q. What was your boss's reaction to
13 this new software that you had written?

14 A. He liked it. He offered me a
15 permanent job in the office at a liveable wage
16 and offered to make me comptroller, keeping all
17 the books which were manual books, but also to
18 do some more automation in the office.

19 Q. From that point forward, have you
20 worked in various capacities at various
21 companies in the field of computer software?

22 A. I have been involved in computer
23 software continuously since about that time.

24 Q. So, how long were you working as

1 comptroller of Minuteman before you moved on to
2 other software companies?

3 A. It was a couple of years, two
4 years, maybe.

5 Q. So let's fast forward, something
6 like ten years from the time you first taught
7 yourself to read basic computer code, that would
8 put us in what general time frame?

9 A. '91, '92.

10 Q. Early '90s. When did you first
11 hear about the internet?

12 A. Probably you know, '93, maybe,
13 '94.

14 Q. And what was your view of the
15 internet at that time?

16 A. I was a skeptic.

17 Q. What do you mean by that?

18 A. Well, I felt like, I think I wrote
19 in the memo somewhere that I think I referred to
20 it as CB radio, but with more typing. It was
21 just a way to kind of chat and look up, you
22 know, addresses and marketing information, but
23 it wasn't particularly useful beyond that.

24 Q. We're talking about a time that's

1 pretty long in regular people years and really
2 long in computer years. Help us remember what
3 the internet was like in '93, could you search
4 for things on Google?

5 A. No.

6 Q. Could you buy or sell anything on
7 Ebay?

8 A. No.

9 Q. Could you watch anything on
10 Netflix?

11 A. No.

12 Q. How about Facebook?

13 A. Didn't exist.

14 Q. What was the internet mostly used
15 for in the early '90s?

16 A. Mostly it was used for E-mail. It
17 was used for a websites that had largely
18 contents that prepared in advance, things like
19 marketing brochures and corporate address
20 information, things that weren't really changing
21 or needing to be updated very often.

22 Q. Did you find that very
23 interesting?

24 A. I thought it was minimally useful.

1 Q. Did anything happen that caused
2 you to change your opinion about the future of
3 the internet?

4 A. So, I was on a trip to Australia,
5 speaking at a technology conference there, and
6 during that time, an internet company called
7 Netscape went public, did their initial public
8 offering on the stock market.

9 Q. Why was that significant to you?

10 A. It was a record setting thing. It
11 was huge buzz in the industry. I think they had
12 record setting valuations, raised a huge amount
13 of money. It was a big deal to me because it
14 made me second guess my own skepticism because I
15 always believed that markets can know things
16 that individuals can't sometimes, so it got me
17 to rethinking my skepticism.

18 Q. When you got back from your trip
19 to Australia, what did you do to investigate?

20 A. Well, I kept reading about the
21 internet. And I like to learn about the details
22 of the way technology works, so I downloaded the
23 specification for how servers and clients
24 communicate on the worldwide web and I read the

1 specification.

2 Q. What is a specification?

3 A. It's a detail description of what
4 each participant in a communication on a network
5 have to send and receive in order to be
6 functioning in a way that works for both sides.

7 Q. After you read the specification,
8 did you do anything to help yourself understand
9 or to be sure you understood what you were
10 reading?

11 A. I never really read anything like
12 that before, so like that, in that format in
13 particular, so to test my understanding, I
14 decided I would write a web page and if I could
15 make it work with some existing browser, then I
16 would sort of assume that my understand of the
17 spec was correct.

18 Q. Where were you when you wrote this
19 test server?

20 A. It was over a weekend in a little
21 room off of my living room, there is a bedroom
22 that I converted to an office and did a lot of
23 my programing there.

24 Q. Let's take a look at demonstrative

1 exhibit B. What is that?

2 A. That's a picture of me sitting at
3 the desk where I did some of the early work
4 related to these patents. That's my dad looking
5 over my shoulder. I definitely had more hair
6 then.

7 Q. Now, for those of us who don't
8 know much about software, or computer networks,
9 take us into this room and tell us what we would
10 have seen as you were conducting your experiment
11 on the website that you built, if instead of
12 your dad it was us looking over your shoulder?

13 A. Well, when you program computers,
14 you type in instructions to the computer. You
15 type in a long series of instructions to tell
16 the computer all the steps you want it to go
17 through, all the things you want it to do.
18 Invariably the first time you type any
19 instructions, things don't work right, you
20 didn't do something right, bugs, things are
21 broken, so there is kind of a process of
22 multiple efforts and fixes and iterations to get
23 to something that actually works.

24 So I kind of had the specification

1 spread out on one side and my keyboard in front
2 of me, and I worked, you know, for quite a while
3 over a weekend just to get things kind of up and
4 running, and you know, implemented a version of
5 a web server that I hoped conformed to the
6 protocol specification I read.

7 Q. What did you physically do to make
8 it work?

9 A. Well, so I had just -- I wanted to
10 see if a browser -- there was a browser at the
11 time called Mosaic. I wanted to see if Mosaic
12 could talk to my web server. I created a little
13 web page that I typed in the address of the web
14 server on my computer and I think the page I had
15 written, this is common with programmers, said
16 "Hello World". Up on Mosaic popped my document
17 that I created that said "Hello World."

18 Q. What did that tell you?

19 A. It told me it worked.

20 Q. How did you feel about that?

21 A. I was very excited. I was really
22 pumped. I called my wife and showed her, and
23 she was a little underwhelmed that I had spent
24 the whole weekend and that's what I had to show

1 for it.

2 Q. After you did this experiment, did
3 you feel as though you now had a good
4 understanding of how the internet worked?

5 A. I felt like I proved that I got
6 it, and I, you know, kind of ultimately as a
7 result of that, I had some opinions.

8 Q. I'll ask you about that. So as a
9 result of reading this specification that you
10 told us about and building this experimental web
11 page that you just described to us, did you see
12 a problem with the way the internet worked?

13 A. My first reaction, I actually had
14 the reaction when I read the spec, but I wasn't
15 sure I understood the spec, that's why I wrote
16 the server. When I had the server written, I
17 understood what I was reading. My initial
18 reaction was this will never scale.

19 Q. You used an expression there, it's
20 not the first time we have heard it in the
21 courtroom, but it's the first time we heard it
22 from a witness. Explain to us what you mean by
23 that expression, it will never scale?

24 A. Well, I had concluded that the web

1 pages that were going to be really interesting
2 and valuable were the ones that had not just
3 been pre-created for everybody that comes there,
4 but were pages that had current and interesting
5 information that would have to be created on the
6 fly in response to the request.

7 So I didn't feel like the way the
8 web protocol was defined that any web server was
9 going to be able to handle as many requests as
10 it would need to handle for these kind of
11 dynamically generated pages.

12 Q. Now, you referred just then to
13 some interesting information. Give us some
14 examples specifically what you're talking about?

15 A. So the same slide, you know, it's
16 fine to go out to the Weather Channel and get
17 their corporate address, but what's more
18 interesting is to go out to the Weather Channel
19 and find out the current temperature and wind
20 speed right now in my location.

21 So being able to go get that kind
22 of information, it's not information that's
23 amenable to someone typing up a document and
24 storing it on the web server in advance, it's

1 something that has to be computed to produce the
2 web page that you want to have, it's that kind
3 of information.

4 Q. Why did you think that the
5 specifications that you read and the system that
6 you saw working in your experiment would have
7 difficulty scaling?

8 A. Because no one computer -- if the
9 predictions about the internet were true, it was
10 going to be millions and maybe billions of
11 people and not dozens and hundreds that systems
12 had been built to accommodate mostly up to that
13 point, or even thousands. And so I felt like
14 that there is no web server that could grow big
15 enough on its own to handle that many requests.

16 Q. Had people, other people besides
17 you recognized this issue of scaling?

18 A. You know, scaling was something
19 that, you know, people building, you know,
20 server systems concerned themselves with for
21 sure.

22 Q. And what was the conventional
23 approach at this time to solving the problem of
24 scaling?

1 A. At this time companies like IBM
2 and DEC had a whole business building gigantic
3 bigger and bigger servers, everything from
4 mainframes to mini, you know, kind of file
5 system size servers, filing cabinet size servers
6 to other kind of servers, so they tried to build
7 bigger and bigger individual hardware
8 components.

9 Q. What did you think about that
10 solution?

11 A. I thought this was an upper bound
12 to how long they could keep doing that and
13 ultimately they wouldn't be able to handle the
14 number of users that were going to come.

15 Q. Did you sitting there in your
16 office by your bedroom think of a better idea?

17 A. I decided that a better approach
18 might be to gang together the computing capacity
19 of smaller computers, when combined together
20 would more than exceed the cost of much larger
21 single computers.

22 Q. What do you think triggered that
23 kernel of an idea of using small computers?

24 A. Well, I was sitting there, I only

1 had small computers, I couldn't afford real big
2 ones, I was thinking in terms -- I also kind of
3 come out of the client server world where lots
4 of people were building systems for these
5 smaller computers, and so I was thinking a lot
6 in those days about how to use these smaller
7 systems.

8 Q. Would there be an upper limit on
9 the number of these smaller computers that you
10 could link together?

11 A. It would only be limited by the
12 bandwidth, interconnect bandwidth between these
13 systems in terms of your ability to move the
14 data around.

15 Q. Once you conceived of this idea of
16 the small computers linked together instead of
17 the big massive computer, did you still see a
18 problem in making the network efficient?

19 A. Yeah. So these smaller computers
20 are pretty unreliable, they break. And so I
21 decided that in order to really make this where
22 the user experience would be really good, you
23 would have to have something that chose which
24 computer did the work that had an awareness of

1 the operating state of all the systems around
2 there.

3 Q. And what idea did you come up
4 with?

5 A. So, we ended up coming up with
6 something we called an intelligent load
7 balancer. We called it a dispatcher in our
8 particular implementation. But it basically
9 knew how to take web requests and pick the
10 server that had the most availability, the most
11 capacity in the moment to actually generate the
12 response that was required for that request.

13 MR. CAWLEY: Your Honor, at this
14 time I would like permission to ask Mr. Lowery
15 to step down to a small white board to
16 illustrate his invention for the jury.

17 THE COURT: All right. Where is
18 the small white board?

19 MR. CAWLEY: The small white board
20 is back here. This will take no more than five
21 minutes, but I either want to put it here facing
22 the jury, or we can put it there.

23 THE COURT: Why don't we leave it
24 there until you can set it up right out where

1 you're standing.

2 MR. CAWLEY: Sure. Okay.

3 MS. BROOKS: Your Honor, might I
4 move over there to see the board?

5 THE COURT: Yes, you may.

6 MS. BROOKS: Thank you.

7 MR. CAWLEY: We're ready to put it
8 up. Can we put it right here, Your Honor?

9 THE COURT: If it will fit. It's
10 probably better if you keep it right there,
11 because I need to be able to see it, too.

12 Mr. Lowery, if you want to step
13 down.

14 BY MR. CAWLEY:

15 Q. You ready, Mr. Lowery?

16 A. Sure.

17 Q. The first question I want to ask
18 you here is could you illustrate for the jury
19 and explain at a high level, how the internet
20 worked before your invention?

21 A. Every web interface, every web
22 communication that takes place always takes
23 place between a web client and a web server.
24 That web client can be a number of different

1 things today. It may be a computer. It's
2 always a computer sitting in your house, maybe.
3 Back in the early days, it might have been a
4 desktop computer, now it might be a tablet, it
5 might be a smart phone with running a browser on
6 it.

7 That web client sends a request to
8 a web server. Now, in the early days that
9 request might have been done over a dial up
10 connection over your phone line, it might have
11 become a wire connected to a networking device,
12 now it might be some wireless connection that
13 you got of some kind.

14 That web server upon receiving
15 that request has responsibility for sending a
16 response to that client. The reason I was
17 concerned is because for those responses that
18 had the most interesting data, the data that
19 didn't exist as a web page but existed in some
20 other form, the web server would have to pull
21 the data from some other data source and turn
22 that into a web page.

23 Q. Let me interrupt you.

24 What's a data source? You put

1 something on the white board that looks like a
2 cylinder of some kind?

3 A. This is where information is
4 stored that is -- it's meant to be sort of
5 abstract. It's where information that is stored
6 that is updatable being updated but not in a
7 form that can be consumed by a web client. So
8 the web server has the challenge of getting that
9 data and turning it into a web page. It didn't
10 exist as a web page in advance, it has to do
11 that once the request arrives. And that puts
12 load on this web server.

13 Q. Tell us again before I interrupted
14 you, you were explaining, what's the problem?

15 A. The problem is that it's one thing
16 for me to sit there on my browser and ask for
17 the hello world page. It's another thing if
18 thousands or millions of people are doing that
19 to the web server I just wrote because that web
20 server will never keep up.

21 Q. How did the computer engineers and
22 scientists at the time think, what was their
23 idea of the best solution to that problem?

24 A. People had a notion of what they

1 called vertical scaling, where they tried to
2 build bigger and bigger computers, mainframes,
3 and minis, and other kinds of systems that they
4 build them as big as they could get them.

5 Q. What did you think of that
6 solution?

7 A. I thought that the internet kind
8 of changed the rules and was going to require a
9 different approach.

10 Q. Did you think of and invent a
11 different approach?

12 A. I did.

13 Q. Can you show the jury what that
14 approach was?

15 A. Sure. I decided to add multiple
16 other computers to the mix here. Each of these,
17 what I call page servers, would be able to
18 expand the capacity of the web server to do more
19 work than the web server could do on its own.

20 Q. Were there any complications of
21 adding these additional page servers? And you
22 have shown three there. How many could there
23 be?

24 A. There could be any number. It

1 could grow to hundreds or thousands.

2 Q. Add three for convenience. Was
3 there any complications of adding these page
4 servers?

5 A. If the web had different page
6 servers do work on its behalf, the problem you
7 ran into, one of these guys could be down, he
8 could be dead at the moment, or he could be
9 completely swamped with really complicated
10 requests that are using up all of his resources.
11 The challenge is if you just blindly send these
12 requests without an awareness of what each
13 server is doing, you run the risk of sending it
14 to a server that is not responsive to doing the
15 work.

16 Q. What did you invent to take care
17 of that issue?

18 A. We decided that there needed to be
19 some intelligence here that governed or drove
20 the selection of these servers in terms of
21 assigning the work that needed to be done, and
22 we called it a dispatcher. It had a brain in it
23 that made the choice based on a continuous
24 awareness of what was up with all these other

1 servers.

2 Q. Now, what you have just put on the
3 magnetic board looks like a person cut in two.
4 The dispatcher isn't a person, is it?

5 A. It's a piece of software. It can
6 be running on any machine or on the same
7 machine. It doesn't matter where it runs.

8 Q. Now, if you would, please, having
9 now built your invention on this board, start
10 from the beginning with the request and take us
11 all the way through the architecture?

12 A. So, I guess one example is every
13 morning my wife will call out and say what's the
14 high temperature going to be today, she wants to
15 figure out what she wants to wear. I can get on
16 my smart phone and look up The Weather Channel,
17 my smart phone gets a request, asks the high
18 temperature for the day in our neighborhood. In
19 this particular case if they were using our
20 technology, the web server that receives the
21 request wouldn't have the web page sitting
22 there, it would have to create the web page that
23 my smart phone wants, and it would have to do
24 that by asking for some of the weather feeds

1 that are constantly flowing into in The Weather
2 Channel.

3 So when the web servers gets the
4 request in our invention it would let the
5 dispatcher choose which of the servers, which of
6 the other servers in a big pool of servers were
7 going to generate the response that it would
8 then deliver to my smart phone and I could tell
9 my wife what the temperature was going to be.

10 Q. Thank you, Mr. Lowery. You can
11 resume the stand now.

12 Can your invention that you just
13 showed us help companies that rely heavily on
14 the internet to make more money?

15 A. I believe so, yes.

16 Q. How is that?

17 A. Well, it can allow them to
18 accommodate user community sizes that are much
19 larger than they could without technology like
20 that.

21 Q. Can page load times help owners of
22 websites make money?

23 A. This is a well-known facit in the
24 industry that slow page load times have a

1 negative effect on user's interest in a website
2 and desire to stay there.

3 Q. Does your invention also affect
4 reliability?

5 A. It does. Because in addition to
6 all the capacity you get with it, because of the
7 awareness about which machines are down, it
8 provides more resilient website because even
9 though some hardware goes down, hard disk crash
10 or whatever, the request the users are making to
11 that site don't go to those down machines, they
12 go to only the machines that are known to be
13 working and responding well.

14 Q. Can increased reliability help
15 owners of websites make money or save money?

16 A. Absolutely, because you know,
17 they're going to lose business either in the
18 form of lost advertising or lost commerce if
19 people can't get on there and do what they're
20 wanting to do.

21 Q. Mr. Lowery, when you had the idea
22 for this invention, where were you working?

23 A. I was working for silicon valley
24 for a company called Gupta Technology.

1 Q. Did you propose your invention to
2 people at Gupta?

3 A. I did, some facets of it, sure.

4 Q. What were you proposing to them?

5 A. We were in a business at the time
6 that was not an internet business per se, we
7 were selling software to enterprises, and I was
8 suggesting to them that we need to sort of
9 internet enable our products and part of that
10 was learning to do this kind of dynamic content
11 or dynamic web page creation. And our
12 particular data sources that we were selling to
13 customers.

14 Q. Let me show you Plaintiff's
15 Exhibit 76. Can you tell us what this is?

16 A. Yeah. So that is an E-mail that I
17 wrote to my supervisor at the time, another
18 engineer, a good friend of mine, and the founder
19 of the company that I was working for, and CEO
20 there.

21 Q. What was the date of this E-mail?

22 A. It's September 1st of '95.

23 Q. And did you describe some of the
24 features of your invention to Gupta in this

1 E-mail?

2 A. Yeah, I described particularly the
3 notion of generating dynamic web pages from HTML
4 template.

5 THE COURT: I apologize,
6 Mr. Cawley. If you're going to have something
7 on the board, what's the exhibit number again?

8 MR. CAWLEY: I'm sorry. 76, Your
9 Honor.

10 THE COURT: Thank you.

11 BY MR. CAWLEY:

12 Q. What was Gupta's reaction to your
13 proposal to use the internet in their products?

14 A. Well, the company's reaction was
15 the CEO's reaction, and he wasn't in favor of
16 doing this.

17 Q. What did he have to say about it?

18 A. I remember what he said, he said
19 there is no future in the wild, wild web.

20 Q. The wild wild web. Did he turn
21 out to be wrong about that?

22 A. I think spectacularly wrong.

23 Q. When you had pitched your
24 invention to Gupta, and they said they weren't

1 interested, what position did that put you in?

2 A. It was kind of gut check time. I
3 had -- you know, I really believed that I was
4 right about what was coming, and that there was
5 an opportunity there, and yet I really didn't
6 want to leave per se, but I felt like if -- when
7 they turned me down, I really had no choice, I
8 had to make a decision about going off and doing
9 this on my own.

10 Q. What did you decide?

11 A. I decided to do that. I decided
12 to leave and do it myself.

13 Q. What were your first steps in
14 forming your new company?

15 A. I did two things. I raised a
16 little investment money from an uncle who was an
17 investor in silicone valley, and I hired two
18 guys I knew as contractors to extend some of the
19 work I had been doing over the last couple of
20 months on this.

21 Q. Who were they?

22 A. The other two co-inventors on
23 these patents, a guy named Ronny Howell and Andy
24 Levine.

1 Q. Why did they become co-inventors
2 on the patents?

3 A. Because there is a bunch of claims
4 of inventing, and we were all working on this
5 together, and there was no way really to
6 decipher and differentiate between what we were
7 all contributing, so we all -- we were advised
8 by counsel that we needed to include everyone
9 who contributed anything to these claims, and so
10 we did.

11 Q. How much was the investment that
12 your uncle made to get you started in this
13 business?

14 A. It was about a hundred thousand
15 dollars.

16 Q. Can you tell us what plaintiff's
17 exhibit 90 is, please?

18 A. This is a copy of a cover sheet, a
19 fax cover sheet related to an update I sent my
20 uncle with some projections of cost about, you
21 know, kind of a product description of what I
22 wanted to build and what we were going to build.

23 Q. What's the date of this fax?

24 A. It's September 15th.

1 Q. And tell us now what plaintiff's
2 Exhibit 60 is?

3 A. It is a product description of
4 some of the early work we were doing from a
5 product standpoint along with a table outlining
6 what, you know, I anticipate costs to develop
7 this technology.

8 Q. Is this what was attached to the
9 previous exhibit, 90?

10 A. I believe so, yes.

11 Q. What did you call your new
12 company?

13 A. We ended up calling it
14 InfoSpinner. We started out calling it
15 WebSpinner because of spiders and worldwide web
16 and all that stuff. But my uncle didn't like
17 that name so we ended up kind of compromising
18 and changing it to InfoSpinner.

19 Q. When you left your employer,
20 Gupta, to start your new company, InfoSpinner,
21 did you stay on good terms with Gupta?

22 A. Definitely. They asked me to help
23 choreograph my departure because they didn't
24 want it to be a morale factor with the rest of

1 the engineering, so we parted on good terms and
2 it was very amicable.

3 Q. Did you enter into a letter
4 agreement with them about your departure?

5 A. I did, yes.

6 Q. Take a look at Exhibit 896 and
7 tell us what that is?

8 A. That is a copy of the termination
9 agreement that I had with Gupta when I left
10 there to go start my own business.

11 Q. What did the agreement provide
12 about your ownership of the invention?

13 A. Well, I wanted to get clarity that
14 they weren't going to come back at me later and
15 say we own this. I had done all this on my own
16 systems and whatnot. They had sort of expressed
17 no interest in it. I wanted to get clarity, so
18 they agreed they didn't have a claim of
19 ownership on this technology.

20 Q. Once you had your company, were
21 you and Andy and Ronald working on developing a
22 product that you could actually sell?

23 A. Well, at first I was modeling and
24 playing around with ideas. We shifted into

1 product development mode working on a real
2 production quality code, you know, things like
3 support for putting multiple languages. You
4 know, we had an early Japanese version for
5 instance, so we really went into product
6 development mode.

7 Q. What would this product do?

8 A. It would do dynamic websites with
9 dynamic page generation with the ability to do
10 intelligent load balancing, all these claims of
11 invention that are in the '554 and '335 patent.

12 Q. Would it allow companies who run
13 websites who want to use your invention to do
14 it?

15 A. Oh, certainly, yeah. In fact,
16 when we finally got around to filing the patent,
17 it was a -- the spec that sort of drove what
18 went into the patent was the actual product we
19 had been working on.

20 Q. Tell us what plaintiff's Exhibit
21 59 is?

22 A. This is a status report sent I
23 believe to my uncle who was obviously the
24 primary investor at this point about kind of

1 what we had gotten done and what we were working
2 on.

3 Q. What's the date of this status
4 report?

5 A. November 15th of '95.

6 Q. Did you have success in finding
7 any clients who were interested in your product
8 early on?

9 A. We did. Right away we found some
10 people.

11 Q. Who was that?

12 A. Well, the first big partner was a
13 company called Software AG.

14 Q. Tell us what Software AG was?

15 A. Software AG was a big
16 multinational company based in Germany, but they
17 had a big North American division that we were
18 working with.

19 Q. What did they want?

20 A. They wanted a license to
21 distribute the technology with their mainframe
22 and middle-mainframe and mini systems which is
23 what they primarily sold software into it, they
24 wanted to distribute it, and include it with

1 some of their other products.

2 Q. How did you demonstrate your
3 product to them?

4 A. I went at least twice. I went up
5 early January and demonstrated it for the first
6 time, and then I went up again and actually
7 closed a contract with them to actually include
8 there and distribute it. It was very exciting.

9 Q. Did you do anything on that trip
10 to actually demonstrate to them how your product
11 could make a difference for a company like them?

12 A. Yeah. It was interesting because
13 they really wanted to do it, but they were a
14 little nervous. We were a little bitty company
15 and we were telling them we were able to
16 integrate it with their software and stuff. I
17 went into their research lab and sat down and
18 their engineers looked over my shoulder and I
19 did a code to integrate with their middle ware
20 software product and showed data from the
21 mainframe system in their database showing up on
22 the web, and that kind of clinched the deal, and
23 they signed the contract.

24 Q. Tell us what plaintiff's Exhibit

1 893 is, please?

2 A. This is a copy of presentation I
3 made to Software AG about what we were proposing
4 and as well as information about the company and
5 the participants.

6 Q. And you say you eventually signed
7 an agreement with Software AG?

8 A. We did.

9 Q. Tell us what plaintiff's Exhibit
10 20 is?

11 A. This is a copy of the
12 distributorship agreement we signed end of
13 February 1996 with Software AG.

14 Q. And at the time of that agreement,
15 had you demonstrated to them a fully functional
16 product?

17 A. It was working, and we were able
18 to, you know, make, you know, evident to them
19 that it could do what we were saying it could
20 do.

21 Q. Was the product built out of your
22 invention?

23 A. It was.

24 Q. Was signing this agreement with

1 Software AG a big deal for you and your company?

2 A. It was huge. It was gigantic for
3 us.

4 Q. Why do you say that?

5 A. Well, we were a little bitty
6 company. I mean, it was really me and two
7 contractors, and it was, you know, all of a
8 sudden we had this huge multinational company
9 that believed in it, committed themselves to it,
10 and actually sent us a million and a quarter
11 advance against royalties to help us push the
12 business forward.

13 Q. What did the million and quarter
14 dollars enable you to do?

15 A. It enabled us to become a real
16 company. We went from, you know, we would meet
17 at the local breakfast place and trade disks to
18 each other with code. We didn't have an office.
19 We were all working out of our houses and
20 squeezing in the hours, and it allowed us to
21 rent office space and hire people. We really
22 become a real business.

23 Q. Now, did you continue to develop
24 your product even after you signed this

1 agreement with Software AG?

2 A. Definitely, yeah.

3 Q. Tell us what plaintiff's Exhibit
4 150 is?

5 A. This is a -- it's a product
6 overview to describing sort of a white paper,
7 it's describing some of the value proposition
8 and the technology that we had.

9 Q. I see there is no dates on this
10 agreement -- or excuse me, this document. Are
11 you able to date it?

12 A. I think this is sometime before
13 the first of March.

14 Q. Of what year?

15 A. Of 1996.

16 Q. Why do you say that?

17 A. Well, it has my old home address
18 on it, where the picture where my dad was
19 standing looking over my shoulder, that was my
20 old home address. And we didn't use that as a
21 corporate address after we signed this Software
22 AG agreement, we moved out of my house and into
23 an office we had sort of identified, we didn't
24 do that anymore.

1 Q. In addition to Software AG, were
2 others in the industry becoming interested in
3 your product?

4 A. They were.

5 Q. In fact, was your former employer
6 Gupta one of them?

7 A. They were.

8 Q. Take a look at plaintiff's exhibit
9 71 and tell us what that is.

10 A. This is a letter I wrote to my old
11 supervisor. Actually I think I faxed it to him
12 based on what's at the top, and describing how
13 to proposing a business relationship. This is
14 -- this isn't out of the blue, it's based on
15 some discussion we had been having about how we
16 might work together.

17 Q. Was your old employer, Gupta,
18 having second thoughts about the internet?

19 A. Yeah, they had changed their mind
20 and were looking for a way to fast forward some
21 of their work in that area.

22 Q. Now, you have given us a lot of
23 information here about what was going on with
24 you and your invention and the company in the

1 early days. I want to change the subject
2 slightly.

3 During this time when you were
4 demonstrating your invention to potential
5 clients and moving into your new office space
6 and building up your business, did you think it
7 was important to protect your invention?

8 A. Well, we learned it was important,
9 is probably a better way to put it. We didn't
10 know anything about patents back then. And it
11 was really our Software AG relationship where
12 the general counsel there kind of urged us to go
13 get patent protection for the technology we
14 built because we were completely clueless at
15 that time. We didn't know anything about it.

16 Q. What did you do to protect your
17 invention?

18 A. We found a law firm that was a
19 credible law firm in the patent intellectual
20 patent space and we hired them to represent us
21 and help us put a patent application in with the
22 US patent office.

23 Q. Did you play a role in preparing
24 that patent application?

1 A. Of course. So I was the point guy
2 of the company. We didn't want to distract
3 other engineers so I did most of the engagements
4 with the law firm in getting the application.

5 Q. When did you file your application
6 for your first patent.

7 A. It was in April '96.

8 Q. And you've already told us that
9 there were other inventors listed on the
10 application?

11 A. Yes.

12 Q. Who were they again?

13 A. Ronny Howell and Andy Levine.

14 Q. Now, all of you by this time are
15 working for the company InfoSpinner, right?

16 A. Right, we're all employees with
17 this company.

18 Q. Did you, you and your two
19 co-inventors, assign your rights of the patent
20 to InfoSpinner?

21 A. Absolutely, certainly.

22 Q. For those of us who may not have
23 actually had a reason to do that, what does that
24 actually mean?

1 A. When you're a technology person
2 working for an actual company, very often when
3 you develop stuff that's germane to the
4 company's business, they have you assign your
5 rights to that intellectual property of that
6 company so that you can't just use them and
7 develop stuff and the company doesn't get the
8 benefit, so it's very typical in the software
9 industry for software engineers to have that as
10 a requirement for their employment.

11 Q. Is it accurate to say that while
12 you and your two co-inventors worked at
13 InfoSpinner, that it was actually InfoSpinner
14 that would own your patent if it eventually came
15 out of the Patent Office?

16 A. Yes, that's the case.

17 Q. Take a look at Exhibit 167 and
18 tell us what that is.

19 A. This looks like the assignment,
20 the original assignment that Ronny and Andy and
21 I signed to assign ownership of the patent to
22 InfoSpinner.

23 Q. Let's take a look at the next
24 page. So no one has to take the time to read

1 all of this, is it your understanding that
2 that's the document that assigned your patent
3 and application to InfoSpinner?

4 A. Right.

5 Q. After the application was filed,
6 did you finish developing the product for
7 Software AG?

8 A. We did, yes, definitely.

9 Q. And when did you release that?

10 A. I think originally we were going
11 to release it in the summer bu it ended up being
12 a little later than that, maybe fall of '96,
13 because we ended up having to do some of the
14 software engineering that they were supposed to
15 do and couldn't get done, so we did the work for
16 them.

17 Q. Did you start to get interest from
18 other major software companies?

19 A. We did. Late summer maybe a
20 company called Beacon IT in Japan, one of the
21 largest data mining companies in Japan at that
22 time expressed some interest in a
23 distributorship agreement and we signed that and
24 they made an investment in the company.

1 Q. How much?

2 A. A little over \$1 million.

3 Q. Any other companies?

4 A. Of course, we had this
5 conversation going with Gupta. And they
6 actually ended up coming back and trying to buy
7 us at a certain point.

8 Q. How about Software AG, they
9 already sent you \$1 million and a quarter. Did
10 they invest further in your company?

11 A. Well, they re-upped and actually
12 expanded the scope beyond North America for the
13 distributorship agreement.

14 Q. Did InfoSpinner have business
15 relationships with other company clients
16 following its agreement with AG and Beacom?

17 A. We did. We had both direct and
18 indirect customers, particularly in Software AG
19 we had to have a direct relationship because we
20 were supporting the product with Software AG and
21 Beacom.

22 Q. Anybody we can recognize?

23 A. U.S. Navy, Seiko Watches.

24 Q. How much installations were there

1 eventually for the InfoSpinner product?

2 A. Ultimately, I think there were 800
3 installations in 2200 different company.

4 Q. If you take a look at Plaintiff's
5 Exhibit 68, specifically on Page 30 of that
6 document. It's Bates label 450.

7 A. Right.

8 Q. Is this a business plan for in no
9 spinner?

10 A. It is.

11 Q. And does it list a number of
12 clients?

13 A. It does.

14 Q. Just so, and we certainly don't
15 want to take the time to go through all of them,
16 just so the jury can get a flavor of what your
17 invention this product enabled, what did your
18 product do for the City of San Antonio Police
19 Department?

20 A. They had built a website that let
21 people get on and see what kind of traffic and
22 accident information was going in the city at
23 the moment or in the moment, so you kind of knew
24 if there were going to be traffic problems.

1 Q. What about the state of Alaska and
2 California?

3 A. Alaska had a vanity license plate
4 system where you get on and design a license
5 plate and then buy a vanity license plate.
6 California had kind of a fraud related website
7 where you could look up remodelers and building
8 contractors and see if they had legal issues
9 that you need to be aware of.

10 Q. I noticed that one of your
11 customers is the U.S. Navy. How did they use
12 your invention?

13 A. Those guys, their procurement
14 systems. When people on the ships needed
15 requisition, things on board, they had a system
16 where they could use their browser from the ship
17 and order parts from on shore and have it
18 shipped out to the ship.

19 Q. How was your technology in general
20 received by the industry?

21 A. Well, people liked it. We got
22 lots of kudos.

23 Q. In addition to this financial
24 success that you're describing, was there

1 anything that happened in April '99 that sort of
2 put the cherry on top of everything?

3 A. Yes. In April of 1999 we received
4 a patent that we're talking about in this case,
5 the '554.

6 Q. How long had the Patent Office
7 been studying your patent application?

8 A. At that point almost exactly three
9 years.

10 Q. How did you find out after those
11 three years of studying your patent that it was
12 going to be granted?

13 A. We were probably notified by our
14 lawyers. Typically, the patent office sends a
15 Notice of Allowance that lets you know they're
16 going to allow some claimed invention, and then
17 some weeks after that you actually get the
18 patent granted. So probably there was some
19 combination of our lawyers and the Patent Office
20 notified us.

21 Q. If you would please identify
22 Plaintiff's Exhibit 6.

23 A. This is a copy of the '554 patent.

24 Q. What did you do when you and your

1 co-inventors learned that your patent was going
2 to be approved and issued?

3 A. We were really excited. A lot
4 high-fives, calling people. We immediately
5 ordered these plaques, got one for all of the
6 inventors and one to hang on the wall in the
7 office.

8 Q. Did you tell anybody else about
9 the patent?

10 A. Yes, friends and family. I told
11 my wife. She was more expressed with that than
12 she was my web career.

13 Q. Did you start marking your product
14 with your patent number?

15 A. We did. We were excited to do
16 that. We felt it was a competitive advantage
17 for us to have that.

18 Q. Take a look at Plaintiffs Exhibit
19 110. What is is this document?

20 A. This is a press release related to
21 the award that we received from the Patent
22 Office.

23 Q. Mr. Lowery, after you got
24 notification that you were going to be issued

1 this U.S patent and you've described excitement
2 and so forth, when the dust settled how did you
3 fool about that?

4 A. Well, on a personal level it was
5 kind of a big deal for me because if you're
6 somebody that's self- taught and found your way
7 through this, you haven't had along the way a
8 lot of ways to sort of measure the significance
9 of your work, the significance of what you're
10 doing. So getting a patent like this is a
11 really big deal. To me personally, it kind of
12 validated all of the stuff I've done was legit
13 and useful.

14 Q. Following the issuance of your
15 first patent, the '554, were there changes going
16 on in the Internet marketplace, and we're
17 talking about 1999 and the 2000 time frame?

18 A. There were huge changes. Any time
19 new technology like what we were doing, and some
20 of our competitors comes out, there's a lot of
21 consolidations and mergers and different things.
22 The market kind of changes. Big players decide
23 to get in, so that's the kind of situation we
24 were facing.

1 Q. You've told us that you had a
2 business InfoSpinner selling the software
3 product. Did you decide to make any changes in
4 your business model to stay competitive?

5 A. Yes. We had a CEO at the time who
6 really wanted to instead of kind of looking at
7 some of the growth path we were on, he wanted to
8 put us on a more aggressive growth path so he
9 had us consider changes to our business model
10 and altering the business strategy to something
11 else.

12 Q. To what?

13 A. Well, we became a service
14 provider. We built what's called a contract
15 distribution network. We took a lot of the
16 ideas and learnings from our original technology
17 and we decided to putting them on the software
18 and we layered them on the whole Internet.

19 Q. Were you in favor of transitioning
20 to this new business model?

21 A. Absolutely. I was instrumental in
22 that. The CEO assigned me the task of
23 recommending some changes in strategy so this
24 was my recommendation to him.

1 Q. At the same time the company
2 changed its business model did you change the
3 name?

4 A. We did. We changed the name to a
5 company called Epic Realm.

6 Q. Did you move the ownership of the
7 patents into epic Realm.

8 A. We did, certainly.

9 Q. Why don't we call up on the screen
10 Plaintiffs Exhibit 186. What is this document?

11 A. This is a notice from the Patent
12 Office that they recorded the assignment of the
13 patents from InfoSpinner to Epic Realm.

14 Q. I don't think we need to take the
15 time to put the following documents on the
16 screen, but you just tell us what they are,
17 Plaintiff's Exhibit 910, 173 and 911?

18 A. 910 is an assignment -- I need to
19 read here.
20 I'm sorry. I'm not seeing what I'm looking for here.

21 Q. Well, let's not spend too much
22 time on it. Are these three documents that I've
23 asked you to look at all assignments that moved
24 ownership of the patent to various --

1 A. Yes, these are assignments from
2 InfoSpinner to Epic Realm.

3 Q. How was InfoSpinner transition to
4 becoming Epic Realm received by the business
5 community?

6 A. It was received well both in the
7 press and in the investment community.

8 Q. Were you able to raise significant
9 amounts of money in investments?

10 A. We did. We raised about \$90
11 million at this time.

12 Q. What did this influx of investment
13 money of \$90 million allow you to do in terms of
14 growth?

15 A. Well, our business plan entailed
16 building out a whole global infrastructure on
17 the Internet to client servers and networking
18 gear and software all over the word so it
19 allowed us to get a big start in building out
20 that global infrastructure.

21 Q. Did the company grow quickly we
22 did?

23 A. We did. We grew very rapidly from
24 34 to 200 or 300 people in a very short month.

1 Q. Tell us very quickly what
2 Plaintiff's Exhibit 126.

3 A. That is a press release talking
4 about the number of the companies we were
5 working with to build out our global
6 infrastructure.

7 Q. Does it name some of the companies
8 that you were partnering with?

9 A. Right, so IBM, Intel. Foundry
10 Networks was a network computer company at the
11 time, a number of big Internet service
12 providers, Red Hat.

13 Q. You told us your company had
14 raised \$90 million in investments to build out a
15 global network. Was that enough money to do it?

16 A. It was only part of the money we
17 needed to do it. The plan was to raise the rest
18 in the public market.

19 Q. What does that mean?

20 A. It means we wanted to take the
21 company public to raise the additional capital.

22 Q. So you sell stock to the public to
23 raise money to put back into the company?

24 A. Right.

1 Q. And remind us, please, what time
2 period we are in now?

3 A. This is around 2000.

4 Q. Now, at this point in 2000, maybe
5 early 2001 you've raised \$90 million in venture
6 capital, you had the clients and partners that
7 you've described to us. Your employees have
8 grown from I think you said 34 to more than 200.

9 Was that all about to change?

10 A. Yes, really rapidly.

11 Q. What happened?

12 A. The Internet bubble popped. A
13 bunch of our customers died, and it became
14 apparent we were not going to be able to raise
15 the additional money we needed around the
16 markets.

17 Q. Did Epic Realm collapse into the.com
18 bubble or the .com crash?

19 A. No, but we had to seriously adjust
20 our whole business plan.

21 Q. Tell us about that.

22 A. Well, we couldn't raise additional
23 capital we needed to finish building our
24 infrastructure so we had to take a different

1 path entirely, so we decided to become a product
2 company again and shut down that portion of that
3 we had just finished building up.

4 Q. In the midst of this new business
5 strategy, did anything happen in July 2002?

6 A. So in July of 2002 we suddenly
7 received the second of the two patents issued in
8 this suit, the '335 patent that was granted by
9 the Patent Office.

10 Q. Identify Plaintiff's Exhibit 14
11 for us, please. What is this?

12 A. This is a copy of the '335 patent.

13 Q. How is this patent, the second
14 one, related to the first patent that you got?

15 A. This is what's called a
16 continuation and what that means is you take the
17 same description of what you built and you just
18 change the claims or you add additional claims
19 and it's like a whole new patent in one way, but
20 the specification itself is all the same. It's
21 just a follow-on or child or sister, however,
22 you want to put it to the original patent.

23 Q. Mr. Lowery, around this time the
24 early 2000's, did it ever dawn on you that there

1 might be other companies that were using your
2 patented inventions?

3 A. Definitely, yes.

4 Q. Tell us about that.

5 A. Well, technology companies who
6 want to tell you about what they're working on
7 and the value of what they're delivering will
8 very often describe the features and functions
9 of what they have to offer. And and it seemed
10 to me from several different companies, they
11 were advertising features and functions that
12 sounded remarkably similar to our patents.

13 Q. So that time frame, again we're
14 talking about the early 2000's, if you believed
15 that was a possibility why didn't you do
16 anything about it?

17 A. Well, we were relatively a very
18 small company and had limited resources. We
19 didn't even have at that time enough resources
20 to finish building out our network, much less
21 taking a licensing program. So we really didn't
22 have the latitude to just go off and do a
23 licensing program.

24 Q. Was Epic Realm's new plan to

1 downsize, become a smaller products company,
2 successful?

3 A. Ultimately, we went through
4 downsizing successfully. Ultimately, the
5 company did not succeed.

6 Q. Did it eventually decide to wind
7 down and dissolve?

8 A. It did.

9 Q. As it dissolved and ceased its
10 operations, did it pay off its creditors?

11 A. It did.

12 Q. What did you personally decide to
13 do as this was going on?

14 A. My thing was new product
15 development and there was not going to be new
16 product development. Because I was not going to
17 do that, I found it was a drain on the resources
18 and value so by mutual agreement I rolled out of
19 the company.

20 Q. What do you mean you rolled out?

21 A. I left the company, ceased my
22 employment there and went on to do other things.

23 Q. Did you stay on good terms with
24 the people who were left at Epic Realm?

1 A. Very much so. I was still a
2 shareholder and they were still operating at
3 that time.

4 Q. Before you left Epic Realm, did
5 you have any discussions with anyone at the
6 company about the future of your patents that of
7 course were owned by Epic Realm?

8 A. So the CEO at the time was someone
9 I had known for a long time and we talked about
10 the opportunity to do a licensing business
11 around the patents. In fact, when we downsized
12 I had spoken with the Board about it, that is
13 something I felt they ought to consider. So
14 there had been numerous discussions with the
15 company about pursuing that business model.

16 Q. Did they ask you to put your
17 thoughts in writing about that?

18 A. Ken did, the CEO of the company
19 did.

20 Q. Let me ask you to identify
21 Plaintiff's Exhibit 79. What is that?

22 A. This is a copy of the e-mail from
23 me to the then CEO of Epic Realm, Ken Hill,
24 regarding he had asked me to write up a summary

1 of my thoughts of furthering the opportunity to
2 pursue licensing agreements.

3 Q. Were there any companies in
4 particular that you suspected were using your
5 patented technology?

6 A. Yes. There were really many
7 companies but there were four big companies.

8 Q. Was Microsoft one of them?

9 A. It was.

10 Q. Why did you suspect that Microsoft
11 was infringing your patents?

12 A. Based on public information they
13 had out, that they were doing things at the
14 time.

15 Q. What kind of information?

16 A. Well, technical features,
17 descriptions of the way their products worked
18 and that kind of thing.

19 Q. What could you tell from that
20 publicly available information?

21 A. You could tell whether the
22 functionality they were claiming kind of matched
23 similarly to the functionality in the patent.

24 Q. So you say that you suspected that

1 Microsoft might be using your invention. Why
2 didn't you know that that was the case?

3 A. Well, because I didn't have access
4 to the internal clinical data or code that would
5 allow me to really know for sure how these
6 things were working. I could only go by
7 information that was public.

8 Q. Over the course of this case or
9 since that time to the present, have you ever
10 had access to Microsoft's code?

11 A. No.

12 Q. And is there an expert witness in
13 this case who has?

14 A. Yeah, Dr. Jones has had access to
15 that.

16 Q. And will he testify, if not this
17 afternoon, tomorrow about that?

18 A. What I'm told, yes.

19 Q. What did you do after you left
20 Epic Realm?

21 A. I did a little consulting for a
22 while. I worked on another little start-up, a
23 product idea that I had and I ended up at
24 Amazon.com in Seattle where I ran a chunk of the

1 retail website there.

2 Q. Have you around that time period
3 done some work for the U.S. government?

4 A. I did. I did some consulting that
5 related to the second Iraq war and top secret
6 clearance and advised some issues related to
7 that.

8 Q. Around the time you left Epic
9 Realm was around 2003?

10 A. Yes.

11 Q. Was there anyone connected with
12 the company that shared your views that Epic
13 Realm should consider recovering fair value for
14 other companies' use of your patents?

15 A. Yeah. We had outside counsel that
16 was working with us at the time, Terry Fokas,
17 who was a big proponent of looking at an
18 opportunity to license the patents.

19 Q. And after Epic Realm wound down
20 its operations, did Mr. Fokas take any steps to
21 pursue fair value for the patents?

22 A. He did. He actually made an
23 arrangement with the Epic Realm shareholders to
24 buy the patents leaving an opportunity open to

1 go license those patents for kind of a few
2 businesses that he was starting.

3 Q. Did you help him do that?

4 A. Eventually I did. I kind of got
5 involved early on, but not involved for a long
6 time.

7 Q. Did you help Mr. Fokas seek
8 additional patent protection for your ideas?

9 A. I did. Anytime you have a
10 portfolio of these patents and things, there's
11 an ongoing sort of engagement with the Patent
12 Office and I kind of helped with that as an
13 inventor and somebody who knew about the patents
14 themselves.

15 Q. Did Mr. Fokas eventually
16 transition ownership of the patents from Epic
17 Realm Licensing to the Plaintiff in this lawsuit
18 Parallel Networks?

19 A. Yes, he did.

20 Q. Are you a shareholder of Parallel
21 Networks?

22 A. I am.

23 Q. What percentage of Parallel
24 Networks do you own?

1 A. Right at 15 percent, I think.

2 Q. Have you worked with Mr. Fokas on
3 any other projects?

4 A. We've done some preliminary
5 planning on some additional sort of business and
6 technology development.

7 Q. What kind of work is that?

8 A. Well, we've talked about doing
9 some work in the area of cloud computing and
10 applying some of the patents currently owned by
11 Parallel Networks to some of the challenges in
12 doing reliable cloud computing network
13 infrastructures.

14 Q. Would that project use your
15 patented invention?

16 A. It would definitely use it and
17 take advantage of it to do interesting things.

18 MR. CAWLEY: Thank you, Mr.
19 Lowery. I will pass the witness.

20 THE COURT: Ms. Brooks?

21 - - -

22 CROSS- EXAMINATION

23 - - -

24 BY MS. BROOKS:

1 Q. Good afternoon, Mr. Lowery?

2 A. I'm going to talk to you about
3 that white board tomorrow rather than take the
4 time to move it. We will talk about the other
5 subject until we break 4:30.

6 Can you go to the last document you
7 talked about PTX-79. Mr. Lowery, this is you writing
8 to someone named K. Hill at Epic Realm; is that
9 right?

10 A. Yes.

11 Q. And the date is September 12,
12 2003; is that correct?

13 A. Yes.

14 Q. If we can go to the second page of
15 the document, so I have highlighted the last
16 paragraph.

17 You say at the end of this e-mail to Mr. Hill, So to
18 sum up, the potential infringers in the software
19 market are IBM, BEA, Sun and Microsoft. Also Apache
20 Tomcat but I'm not sure they're worth the trouble.
21 On the network device side, Cisco, Foundry, Nortel
22 and any other layer 7 load balancing solutions; is
23 that right?

24 A. Yes, you read that correctly.

1 Q. Thank you. At this point in time
2 you had not seen -- let's just focus on
3 Microsoft. You had not seen any software as to
4 how Microsoft's web server functioned; is that
5 correct?

6 A. I had used IIS in my work but I'm
7 not sure what you're asking.

8 Q. Let me try my question again. My
9 question was at this point you had not seen any
10 software code as to how Microsoft web server
11 functioned; is that fair, sir?

12 A. I have no access to the source
13 code for Microsoft web server, that's correct.

14 Q. And am I correct that source code
15 is highly proprietary?

16 A. It can be. There are open source
17 solutions.

18 In fact, Apache Tomcat is one of them. You can see
19 the source code of that. And even Microsoft to a
20 certain extent is an open source business, but
21 certainly some source code is held proprietary.

22 Q. And you would agree that some
23 source code is certainly held as proprietary
24 within the company that created the source code,

1 correct?

2 A. Certainly.

3 Q. And at this point in time you
4 haven't seen any source code regarding how
5 Microsoft web server functions, and I take it to
6 this day you have not been privy to the source
7 code that would show you how Microsoft's web
8 server actually functions; is that fair?

9 A. That's correct.

10 Q. Am I correct that you have not
11 spoken, for example, to Mr. Alam regarding how
12 the IIS pipeline actually functions from a
13 source code level in the web server; is that
14 correct?

15 A. I'm sure I have not. I've talked
16 to a lot of engineers at Microsoft through the
17 years, but I don't recall talking to him.

18 Q. And you have not talked to Dr.
19 David Maltz regarding how Frontdoor Version 1
20 and FrontDoor Version 2 from a source code level
21 functions within Microsoft's web server; is that
22 correct?

23 A. That's correct.

24 Q. Now, let's talk briefly that will

1 get us to the ends of the day. You told us
2 earlier what you invented. Let's talk a little
3 bit about what you didn't invent so the Ladies
4 and Gentlemen understand.

5 Is it fair to say that you did not
6 invent web servers?

7 A. Certainly, we called them out as
8 existing art in the patent.

9 Q. And is it fair to say you didn't
10 invent web pages?

11 A. No, certainly not.

12 Q. You did not also invent web pages;
13 is that correct?

14 A. That's correct.

15 Q. And you also did not invent the
16 idea of a server that receives and processes a
17 web page request; is that correct?

18 A. No, we didn't invent that.

19 Q. And you did not invent dynamically
20 generating web pages; is that correct?

21 A. That's correct.

22 Q. And in turn you also did not
23 invent HTML, the language we've been talking
24 about?

1 A. That's correct.

2 Q. In fact, you told us a little bit
3 about the dispatcher, this intelligent
4 dispatcher that does load balancing, but isn't
5 it true, sir, you also did not invent the idea
6 of low balancing itself; is that correct?

7 A. That's correct.

8 Q. In fact, even before you came up
9 with your intelligent load balance, it would not
10 surprise you to know that people had written
11 Ph.D.s on load balancing prior to your
12 conceiving of your invention?

13 A. I will take you at your word.

14 Q. Well, did you not say exactly
15 those words at your deposition, sir?

16 A. I don't recall whether people had
17 written whole Ph.D.s. They may have. That's
18 entirely possible. I can't cite a Ph.D. thesis
19 on load balancing as we sit here.

20 Q. Would it surprise you in the least
21 to learn that people had written Ph.D.s on load
22 balancing prior to your invention?

23 A. I agree with you.

24 Q. Now, let's turn to what you did

1 invent. Let's go to your binder to the patent
2 which is the first tab in your binder, and that
3 should be PTX-0006 and that's going to be the
4 '554 patent. Let me know when you're there, Mr.
5 Lowery?

6 A. I'm there.

7 Q. You talked about the patent, but
8 you didn't really show us any of the figures or
9 any of the claims. You are a listed inventor on
10 this patent, correct?

11 A. I am.

12 Q. And this patent was filed with the
13 United States Patent and Trademark Office on
14 April 23, 1996; is that right?

15 A. Right.

16 Q. Now, if we could turn, Mr. Lowery,
17 to Figure 4 in the patent which is going to be
18 at Page 133507.

19 Now, I showed the Ladies and
20 Gentlemen in my opening statement. Is this one
21 of the figures in your '554 patent?

22 A. It looks to be, yes.

23 Q. Is this similar to what you were
24 trying to show us on the white board?

1 A. Not anything like this detail. It
2 was a much simpler explanation, but many of the
3 parts of this I talked about on my board.

4 Q. Now, so next to Figure 4 is Figure
5 5; is that right?

6 A. Yes.

7 Q. What do you call this sort of flow
8 thing we're looking at in Figure 5? What is
9 that called?

10 A. I guess you could call it a data
11 flow.

12 Q. Since I went through Figure 4 in
13 opening, let's go through Figure 5 right now,
14 unless --

15 MS. BROOKS: Your Honor, it's
16 4:29.

17 THE COURT: It is indeed.

18 MS. BROOKS: If this is a good
19 place to stop, it is for me, Your Honor.

20 THE COURT: Ladies and Gentlemen,
21 I remind you again you're not to talk about the
22 case with anybody even including amongst
23 yourself.

24 Thank you for being there. I look

1 forward to seeing you tomorrow morning in the
2 jury box. You're free to go.

3 (Jury exited.)

4 THE COURT: Mr. Lowery, you can
5 step down. Counsel, I will tell you, you're
6 not supposed to talk to anybody about the case
7 while your on cross-examination.

8 Is there anything we need to talk
9 about counsel before we break for the evening?

10 MR. CAWLEY: If the Court will
11 indulge me for a minute, and I hope I'm not
12 standing out of bounds here but recently and I'm
13 sure Ms. Brooks will agree with this, there's
14 been a number of articles and studies about the
15 shocking incidents about jurors ignoring the
16 Court's admonition and doing research on the
17 Internet.

18 I will request on behalf of the
19 parties if Your Honor would consider giving
20 occasional reminder to the jury of your
21 instructions not to do that.

22 THE COURT: Okay. Anything in
23 response, Ms. Brooks? Do you have anything you
24 want to say about that? You don't have to.

1 MS. BROOKS: I defer to the Court,
2 Your Honor.

3 THE COURT: I will be happy to --
4 in fact, if it looks like I'm going to forget,
5 remind me after the last break, but I will make
6 sure I tell them that tomorrow evening, but I
7 will tell them don't talk to anybody and do any
8 research.

9 MR. CAWLEY: Thank you, Your
10 Honor. I appreciate it.

11 MS. BROOKS: Your Honor, we have
12 corrected copies of the preliminary
13 instructions. Before we give them to your
14 clerk, may we double check to make sure they're
15 correct at this time?

16 THE COURT: That's fine. They
17 were promised that they would have these with
18 them at some point. Make sure before -- I
19 don't know at what point the parties want to
20 make sure that they have these.

21 They will have them for sure at
22 the very end so take the time you need, but I
23 don't want somebody saying, hey, this was
24 supposed to be in such and such submission to

1 the jury before I was intending to do it at the
2 very end and have it scrambled. Am I making
3 sense?

4 MS. BROOKS: Yes, Your Honor.

5 THE COURT: Okay. Go back and
6 make sure it's corrected. All right then.
7 Thanks very much, and I will see you all
8 tomorrow morning just before five minutes to
9 9:00 unless I hear from you before that. In
10 other words, I will be in the office by 8:30 if
11 there's a problem. So is there a problem?

12 MR. BOVENKAMP: No, Your Honor.
13 What is the best way to advise the Court that
14 there may be an issue that we require assistance
15 on?

16 THE COURT: Call chambers at
17 302-573-6001. If you can't reach chambers, the
18 next step is to call the clerk's office and
19 reach somebody in the clerk's office. Okay.
20 Thanks very much. We stand in recess.

21 (Court recessed at 4:34 p.m.)
22
23
24

1 State of Delaware)
2)
3 New Castle County)
4

5 CERTIFICATE OF REPORTER
6

7 I, Dale C. Hawkins, Registered Merit
8 Reporter, Certified Shorthand Reporter, and Notary
9 Public, do hereby certify that the foregoing record,
10 Pages 1 to 320 inclusive, is a true and accurate
11 transcript of my stenographic notes taken on May 8,
12 2017, in the above-captioned matter.
13

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 8th day of May 2017, at
16 Wilmington.
17

18
19 /s/ Dale C. Hawkins

20 Dale C. Hawkins, RMR
21
22
23
24